

ORIGINAL

IN THE SUPREME COURT OF OHIO

Gary L. Bibler, et ex.,
Appellant

v.

Jill D. Stevenson, et al.,
Appellee

FILED
APR 15 2016
CLERK OF COURT
SUPREME COURT OF OHIO

Supreme Court
Case No. 2015-1737

On Appeal from the Hancock
County Court of Appeals
Third Appellate District

Court of Appeals
Case No. 5-14-29

APPELLANTS' BRIEF ON THE MERITS

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STATEMENT OF THE CASE

This case arises from the decision of the Hancock County Court of Appeals, Third Appellate District, which sustained, by 2 to 1, a decision of the Hancock County Common Pleas Court awarding summary judgment to the City of Findlay on the basis of statutory immunity.

The Hancock County Common Pleas Court case began with the complaint of Gary and Yvonne Bibler (collective the "Biblers") naming Jill Stevenson and the City of Findlay (the "City") defendants claiming injury to Gary Bibler as a result of the collision between the vehicle Gary Bibler was operating and one operated by Jill Stevenson at the intersection of Sandusky Street (Ohio State Route 568) and Wilson Street in the City of Findlay on May 27, 2011. Biblers' Complaint and Stevenson's Answer and Eighth Affirmative Defense both alleged that the stop sign controlling traffic on Wilson Street at the intersection of Sandusky Street was obscured by tree foliage and that the City was negligent in failing to remove the obstruction.

The City answered and, after some discovery, moved for summary judgment on the basis of statutory immunity. The Hancock County Common Pleas Court, relying on the decision of the Court of Appeals for Franklin County, *Walters v. City of Columbus* 10th Appellate District 2008 Ohio 4258, granted the City's motion dismissing all claims against it.

Biblers and Stevenson then settled the remaining issues and Biblers brought the matter to the Third District Court of Appeals which sustained the decision of the trial court.

Biblers filed their Notice of Appeal and Memorandum in Support of Jurisdiction which was allowed by the Court by order dated February 24, 2016.

STATEMENT OF FACTS

On May 27, 2011, Gary Bibler and Jill Stevenson were involved in a two vehicle accident. The accident occurred at the corner of Sandusky Street (Ohio State Route 568) and Wilson Street in Findlay, Ohio. Stevenson, traveling northbound on Wilson Street, failed to stop at a stop sign at the intersection. She collided with Bibler who, heading eastbound on Sandusky Street (Ohio State Route 568), had the right of way. The stop sign controlling northbound traffic on Wilson Street at the intersection was obscured by tree foliage; because of this, Stevenson claims she did not see the stop sign until it was too late for her to stop. Officer Spieker of the Findlay Police Department investigated the accident and testified at deposition that he felt there was enough of a view-obstruction that something should be done about the tree, noting that an accident had previously occurred at the intersection on September 13, 2010 (undisputed facts as found by Hancock County Common Pleas Court Decision). *See Appendix C.*

The trial court held that statutory immunity applied to the City based upon an interpretation of the phrase "mandated by the Ohio Manual of Uniform Traffic Control Devices OMUTCD" contained in R.C. 2744.01(H). The trial court followed the 3rd District's interpretation in *Walters* that, unless the language of OMUTCD makes the installation of a device mandatory by the use of the phrase "shall be used," it is not part of the highway.

PROPOSITIONS OF LAW

1. THE WORD "MANDATED" AS USED IN R.C. 2744.01(H) MEANS ANY TRAFFIC CONTROL DEVICE APPROVED FOR USE BY THE OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES.

2. LOCAL AUTHORITIES ARE REQUIRED BY R.C. 4511.65 TO ERECT STOP SIGNS, YIELD SIGNS, OR TRAFFIC CONTROL DEVICES AT ALL INTERSECTIONS WITH STATE ROUTES UNDER THEIR JURISDICTION.
3. TRAFFIC CONTROL DEVICES REQUIRED BY R.C. 4511.65 ARE PART OF THE PUBLIC ROADS AS DEFINED IN R.C. 2744.01(H).

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NO. 1

THE WORD "MANDATED" AS USED IN R.C. 2744.01(H) MEANS ANY TRAFFIC CONTROL DEVICE APPROVED FOR USE BY THE OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES.

STATUTORY SCHEME AND PURPOSE

The interpretation of the meaning of the word "mandated" as used in R.C. 2744.01(H) by prior courts was apparently done without consideration of the "well settled rule of interpretation that statutory provisions be construed together and the revised code be read as an interrelated body of law." *State ex rel. Stewart v. Russo*, 2016-Ohio-421; citing *State v. Mooning*, 76 Ohio St. 3d 126, 128 (1996).

R.C. 4511.01 to 4511.84 - particularly R.C. 4511.09 through 4511.84 - directly affect the safety of the public when using the roadways in Ohio. The enactment of R.C. 4511.11, titled "Local conformity to manual for uniform system of traffic control devices," and particularly its sections relating to street signage, must have been for the purpose of protecting the safety of the public. R.C. 2744.02 - Ohio's statutory immunity for political subdivisions - has been codified in a manner that, without legislative exception, would make the State and all political subdivisions immune from liability for negligence in their duties as imposed in the case of the City of Findlay by R.C. 723.01 and R.C. 4511.11.

Uniformity of traffic control is the stated purpose of R.C. 4511.09 and the legislature makes it clear that local authorities shall place and maintain traffic control devices provided for in R.C. 4511.09 as are necessary to indicate and carry out R.C. 4511.01 to 4511.84: “to regulate and warn or guide traffic.” R.C. 4511.11(A).

The legislature then makes it clear that those are the only traffic control devices to be used in Ohio and it is a crime for anyone to manufacture or sell devices that do not conform. *See R.C. 4511.11(D)-(G).*

To ensure compliance by political subdivisions with the obligations imposed by the previously described legislation and in part to protect the public, the legislature also created an exception to statutory immunity from suit in the form of R.C. 2744.02(B)(3):

Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

R.C. 2744.01(H) additionally contains a definition of public roads that excludes berms, shoulders, rights of way, or “traffic control devices” unless the traffic control devices are mandated by the Ohio Manual of Uniform Traffic Control Devices. (“OMUTCD”).

This language has been debated and opinions written too numerous to mention that interpret first that the purpose of the amendments to the definition of “roadway” and the language of R.C. 2744.02(B)(3) is to limit the exposure of liability to political subdivisions relying primarily on the court’s decision in *Howard v. Miami Township Fire Div.*, 119 Ohio 3d 1 (2008) where the court was considering the amendment to R.C. 2744.02(B)(3) and the

effect of the more restrictive language “negligent failure to remove obstructions” in place of allowing a nuisance.

This decision has been used to interpret the definition section 2744.01(H) as also limiting liability exposure, which it does by limiting the definition of public roadway. Nothing in the *Howard* decision or the recent decision of the 10th District in *Walters v. City of Columbus* or the 3rd District in this case suggest the purpose was to limit the obligation of the City of Findlay to provide traffic control devices for the safety of the public and to maintain them to the extent that their purpose is accomplished.

The definition of “obstruct” as recited in *Howard supra* included “3. To cut off from being seen; blocks (the view) *Howard*, 119 Ohio St. 3d at 3.” The blockage of view was not an issue in the *Howard* case and Appellants, to wit: Gary L. Bibler and Yvonne M. Bibler, believe for that reason it was not included in the holding of the court that obstruction must be an obstacle that blocks or clogs the roadway and not merely a thing or condition that hinders or impedes the use of the roadway or that may have the potential to do so.”

Interpretation of statutes should not lead to absurd results, i.e. immunity applies if a citizen is killed because of the government’s negligent obstruction of a stop sign but immunity does not apply to the claims of a freight company suffering damages because a shipment was delayed by the government’s negligent blocking of the highway.

The legislature, in other sections, reduced the potential exposure of political subdivisions by adopting caps on damages and eliminating liability for medical expenses if paid by third parties. R.C. 2744.05(B)(1) and (C)(1). However, this in no way eliminates the duty that a political subdivision may have to a potential claimant, but rather sets a limit on what their damages may be. This is a crucial distinction that should not be overlooked.

The legislature clearly did not intend to reduce the duty imposed on political subdivisions to keep the roads in repair and free of obstructions.

THE CURRENT CONSTRUCTION

The Tenth District Court of Appeals in *Walters v. City of Columbus supra* concluded that the phrase “mandated by Ohio Manual of Uniform Traffic Control Devices” as contained in R.C. 2744.01(H) means that, unless the Department of Transportation in the manual says a stop sign “shall be used,” it is not part of the highway, thereby eliminating the exception of statutory immunity for the City of Findlay and the like. This holding has been followed by many others and particularly *Darby v. City of Cincinnati*, 1st District Hamilton No. C-130430, 2014-Ohio-2426, and *Yonkings v. Piwinski et al.*, 10th District Court of Claims Nos. 11AP-07 & 11AP-09, 2011-Ohio-6232. All of these courts have inexplicably held that the OMUTCD is devoid of any language indicating that stop sign placement at an intersection is ever mandated.

THE PROBLEM WITH THE CONSTRUCTION

If the purpose of the exception to statutory immunity is to require a city to protect the public using its roadways, then the holdings cited in the cases across the state that have addressed the issue thus far produce results completely contradictory of this intended purpose. In essence, they would allow the city to completely stop using stop signs at intersections like Wilson Street crossing Sandusky Street. Even if it were of a mind to actually put up a stop sign, the city can obscure it from a drivers’ view with buildings, trees, other signs, or anything else without fear of liability. Such would defy common sense and practice.

The dissenting opinion in the case before this Court today squarely points to the obvious error in the *Walters supra* construction by pointing out that the legislature, via R.C.

4511.65, made the erection of traffic control devices at through highways designated as all state highways mandatory for political subdivisions such as the City of Findlay.

THE CONSTITUTIONAL PROBLEM WITH CONSTRUCTION

Further, this line of cases suggest a construction which renders the statute unconstitutional as an impermissible delegation of authority to the Department of Transportation to determine when a political subdivision is immune and when it is not. Article II, Section 1 of the Ohio Constitution provides "that the legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives..." The Ohio Supreme Court has long recognized that, under certain circumstances, the Ohio legislature may delegate its power without running afoul of the constitution so long as it establishes the policy of the law by adopting standards. *Matz v. J.L. Curtis Cartage Co.*, 7 N.E. 2d 220, 132 Ohio St. 271 (1937). In R.C. 4511.09, the legislature provided the standard upon which the Department of Transportation should adopt a manual and specifications for a uniform system of traffic control devices by using the known standard at the time approved by the American Association of State Highway Officials. Nowhere, however, did the legislature ever establish a standard that the Department of Transportation could use to determine if immunity should apply or not. R.C. 4511.09 and R.C. 4511.11 establish the traffic control devices that can be used in Ohio.

To avoid the problem of the conflict with R.C. 4511.65 and improper delegation, the courts should construe the use of the word "mandated" in R.C. 2744.01(H) to mean that the signs set forth in the OMUTCD are the only traffic control devices allowed in Ohio and not that the Department of Transportation must include the phrase "shall be used" in its manual

in order to remove a municipality from the statutory immunity exception. Such an interpretation also avoids the absurd result that is so clear in the current construction.

Appellant contends that when the Revised Code sections regarding traffic control devices and statutory immunity are read as an interrelated body of law, this proposition of law contains the only logical meaning of the word "mandated" as used in R.C. 2744.01(H)

**TRAFFIC CONTROL DEVICES MANDATED BY THE OHIO MANUAL OF UNIFORM
TRAFFIC CONTROL DEVICES**

The 2005 version of the OMUTCD contains a description of each device that can be used on Ohio's roadways and at Section 1A.10 (*Appendix G*):

"Interpretations, Experimentations, Changes, and Interim Approvals Standard.

Design, application and placement of traffic control devices other than those adopted in this manual shall be prohibited unless the provisions of this section are followed."¹

The manual then provides lists with specifications, as in most cases, with pictures of the devices "mandated."

The manual at Section 1A.10 also provides detailed instructions and criteria for testing and approval of changes to existing devices or approval of new devices.

Appellants submit that the only interpretation that can be given to the words "mandated by the Ohio Manual of Uniform Traffic Control Devices" contained in R.C. 2744.01(H) is that once the devices are approved for use, they constitute the devices mandated by the manual, and when used become part of the highway.

Remember, to use a device not so mandated is a violation of R.C. 4511.11.

¹ The entire manual is available at http://www.dot.state.oh.us/Divisions/Engineering/Roadway/DesignStandards/traffic/OhioMUTCD/Pages/OMUTCD2012_current_default.aspx along with the updated 2012 version.

Such interpretation eliminates all the defects of the *Walters supra* interpretations described herein above and the obvious conflict between the manual and R.C. 4511.65.

The Department of Transportation will be doing its job by providing the devices to be used to regulate, warn, and guide traffic, and the legislature will then have exercised its constitutional authority to determine when the exception to immunity exists.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NO. 2

LOCAL AUTHORITIES ARE REQUIRED BY R.C. 4511.65 TO ERECT STOP SIGNS, YIELD SIGNS, OR TRAFFIC CONTROL DEVICES AT ALL INTERSECTIONS WITH STATE ROUTES UNDER THEIR JURISDICTION.

R.C. 4511.65 requires the installation of traffic control devices at the intersection of all through highways whether it be a stop sign, yield sign, or traffic signal.

Because these traffic control devices are “mandated” by statute, the Legislature surely did not intend to exclude them as part of the highway. Yet, current decisions by lower courts in this case and others suggest otherwise.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NO. 3

TRAFFIC CONTROL DEVICES REQUIRED BY R.C. 4511.65 ARE PART OF THE PUBLIC ROADS AS DEFINED IN R.C. 2744.01(H).

The Third District Court of Appeals in the case cited the following from the manual as it existed:

Sections 2B.04-06 of the OMUTCD regulate the use and maintenance of stop signs. Specifically, Section 2B.05, entitled “STOP Sign applications,” states:

Guidance:

STOP signs *should* be used if engineering judgment indicates that one or more of the following conditions exist:

A. Intersection of a less important road with a main road where application of the normal right-of-way rule would not be expected to provide reasonable compliance with the law;

B. Street entering a through highway or street (O.R.C. Section 4511.65 provides information on through highways (see appendix B2));

C. Unsignalized intersection in a signalized area; and/or

D. High speeds, restricted view, or crash records indicate a need for control by the STOP sign.

(Emphasis added.) The use of the word “should” instead of the word “shall” indicates that stop signs like the one at issue here are not mandatory. Rather, they are discretionary. Because the decision to erect the stop sign was discretionary. We find that it was not mandated by the OMUTCD. Thus, the stop sign does not fall under the definition of “public road.”

Bibler v. Stevenson, 3rd Dist. Hancock No. 5-14-29, 2015-Ohio-3171, ¶23. This language directly conflicts with R.C. 4511.65 which very succinctly says “shall be erected.”

Third District Judge Willamowski, a former member of the Ohio House of Representatives from 1997 to 2006, opines in his dissent:

While I agree with the majority that not all traffic control devices are mandated by the OMUTCD, in this case, a traffic control device was mandated at this intersection by statute, which the majority acknowledges. See R.C. 4511.65 and ¶13. No administrative agency has the authority to pass rules which contradict a statutory mandate. *Williams v. Spitzer Autoworld Canton, L.L.C.* 122 Ohio St. 3rd 546, 2009-Ohio-3554, 913 N.E. 2nd 410, ¶18. Although the OMUTCD appears to make the location of the traffic control device optional, in this case, at this intersection, the statute says they are mandatory. The City of Findlay had the option of which particular traffic control device to use at this intersection and could have chosen something other than a “Stop” sign, such as a flashing red light, but it did not have an option as to whether a traffic control device was placed a this intersection . To follow the logic of the majority, no specific traffic control device would ever be mandated merely because the OMUTCD uses the word “should” instead of “shall”. This despite the fact that R.C. 4511.65 clearly mandates a traffic control device be placed at locations such as the intersection in this case. Once the City of Findlay chose the “Stop” sign, in lieu of any other traffic control device, as the traffic control device to be used at the intersection in question, that “Stop” sign became the mandated traffic control device. That makes it part of the public road.”

Bibler v. Stevenson 2015-Ohio-3171, ¶35.

When the legislature says "shall" the Director of Highways cannot override by saying "should."

CONCLUSION

Construction of R.C. 2744.02(B)(3) and R.C. 2744.01(H) must be done with the total statutory scheme for protection of the public using the roadways considered. "Common sense and practice" should dictate that the only interpretation that can be given to the phrase "mandated by the Ohio Manual of Uniform Traffic Control Devices" means only those devices adopted by the manual. The manual does not contain an overall mandate for installation; however, it does mandate those devices that can be used with all others prohibited. The manual in this case contains no legal requirement for the installation of any traffic control devices, but does by its language and the language of R.C. 4511.11 prohibit installation of any device not adopted by the manual. The legislature only had one mandate to consider when adopting R.C. 2744.01(H).

The Appellants ask that the court overrule cases to the contrary and support the legislative branch in its obvious efforts to protect the driving public from the negligence of public agencies in maintaining Ohio's highways.

Respectfully submitted,

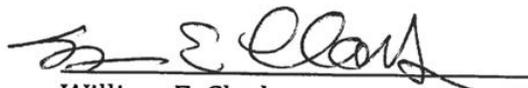


William E. Clark

COUNSEL FOR APPELLANT,
GARY L. BIBLER, ET EX.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. mail to Donald Rasmussen, Attorney for Appellee City of Findlay, 318 Dorney Plaza, Rm. 310, Findlay, Ohio 45840 and Eric M. Allain, Attorney for Appellee City of Findlay, 28906 Loraine Road, Suite 101, North Olmstead, OH 44070, by Regular U.S. Mail, on the 13th day of April, 2016.

A handwritten signature in black ink, appearing to read "W. E. Clark", written over a horizontal line.

William E. Clark

COUNSEL FOR APPELLANT,
GARY L. BIBLER, ET EX.

APPENDIX A

ORIGINAL

IN THE SUPREME COURT OF OHIO

15-1737

Gary L. Bibler, et al.,

Appellant

v.

Jill D. Stevenson, et al.,

Appellee

On Appeal from the Hancock County
Court of Appeals
Third Appellate District

Court of Appeals
Case No. 5-14-29

NOTICE OF APPEAL OF APPELLANT GARY L. BIBLER

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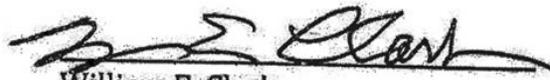
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SUPREME COURT OF OHIO

Notice of Appeal of Appellant Gary L. Bibler

Appellant Gary L. Bibler hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hancock County Court of Appeals, Third Appellate District, entered in Court of Appeals Case No. 5-14-29 on September 14, 2015.

This case is one of public or great general interest.

Respectfully submitted,

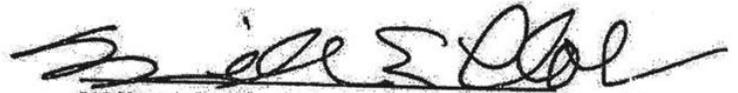


William E. Clark

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CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to Donald Rasmussen, Attorney for Appellee City of Findlay, 318 Dorney Plaza, Rm. 310, Findlay, Ohio, by Regular U.S. Mail, on the 26th day of October, 2015.



William E. Clark

COUNSEL FOR APPELLANT,
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APPENDIX B

17-882

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SEP 17 2015
CATHY PROSSER WILCOX
Clerk
HANCOCK COUNTY, OHIO

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

GARY L. BIBLER, ET AL.,

PLAINTIFFS-APPELLANTS,

CASE NO. 5-14-29

v.

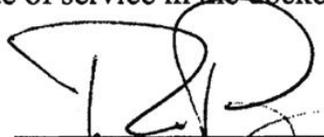
JILL D. STEVENSON, ET AL.,

**J U D G M E N T
E N T R Y**

DEFENDANTS-APPELLEES.

For the reasons stated in the opinion of this Court, the assignment of error is overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellants for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.



JUDGE


JUDGE

WILLAMOWSKI, J., DISSENTS
JUDGE

DATED: September 14, 2015

APPENDIX C

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SEP 14 2015
CATHY PROSSER WILCOX
Clerk
HANCOCK COUNTY, OHIO

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

GARY L. BIBLER, ET AL.,

PLAINTIFFS-APPELLANTS,

CASE NO. 5-14-29

v.

JILL D. STEVENSON, ET AL.,

OPINION

DEFENDANTS-APPELLEES.

**Appeal from Hancock County Common Pleas Court
Trial Court No. 2013 CV 243**

Judgment Affirmed

Date of Decision: September 14, 2015

APPEARANCES:

***William E. Clark* for Appellants**

***Donald J. Rasmussen* for Appellee, City of Findlay**

000007

ROGERS, P.J.

{¶1} Plaintiffs-Appellants, Gary Bibler and Yvonne Bibler (collectively “the Biblers”), appeal the judgment of the Court of Common Pleas of Hancock County granting summary judgment in favor of Defendant-Appellee, the City of Findlay (“the City”). On appeal, the Biblers argue that the trial court erred in granting the City’s motion for summary judgment because sovereign immunity was not applicable in this case. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} The facts of this case are undisputed. On May 27, 2011, Gary Bibler and Jill Stevenson were involved in a two-vehicle accident. The accident occurred at the corner of Sandusky Street and Wilson Street in Findlay, Ohio. Stevenson failed to stop at a stop sign at the intersection and collided with Bibler who had the right of way. The stop sign controlling the northbound traffic on Wilson Street at the intersection was obscured by tree foliage. Because of this, Stevenson claimed she did not see the stop sign until it was too late.

{¶3} On May 17, 2013, the Biblers filed a complaint against the City and Stevenson. In it, they alleged that both Stevenson and the City were liable for negligence. Specifically, they alleged that Stevenson was negligent for failing to stop at a stop sign, which caused the accident and that the City was negligent for allowing the view of the stop sign to be obstructed. On June 18, 2013, the City filed its answer

denying the Biblers' allegations and pleaded numerous affirmative defenses, including sovereign immunity pursuant to R.C. 2744.01, et seq.

{¶4} On December 6, 2013, the City filed a motion for summary judgment. In the motion, the City argued that it was immune from liability pursuant to R.C. 2744.01, et seq. On December 30, 2013, Stevenson filed her memorandum in opposition. On January 15, 2014, the Biblers filed their memorandum in opposition of the City's motion. In addition to the three memoranda, the trial court also possessed the complete depositions of Stevenson and Officer Kevin Spieker of the Findlay Police Department.

{¶5} On April 8, 2014, the trial court granted the City's motion. It found that "Officer Kevin Spieker of the Findlay Police Department investigated the accident and testified that he felt there was enough of a view obstruction that something should be done about the tree noting that an accident had previously occurred at the intersection on September 13, 2010, less than nine months prior to [this action] * * *." (Docket No. 58, p. 2). However, it found that the City was a political subdivision engaged in a governmental function and that no exception to the statute applied.

{¶6} On April 23, 2014, the Biblers filed a motion for reconsideration of the trial court's decision to grant the City summary judgment. The trial court denied the motion and affirmed its previous decision awarding the City summary judgment on May 14, 2014.

{¶7} After the City was dismissed from the case, the Biblers and Stevenson settled the remaining claims. On September 16, 2014, the trial court rendered a judgment entry dismissing the case.

{¶8} The Biblers filed this timely appeal, presenting the following assignment of error for our review.

Assignment of Error

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANT/APPELLEE, THE CITY OF FINDLAY, ON ITS CLAIM OF GOVERNMENTAL IMMUNITY.

{¶9} In their sole assignment of error, the Biblers argue that the trial court erred by granting the City's motion for summary judgment. Specifically, they claim that an exception applies to the general rule that political subdivisions enjoy immunity while engaging in either governmental or proprietary functions. We disagree.

Summary Judgment

{¶10} An appellate court reviews a summary judgment order de novo. *Hillyer v. State Farm Mut. Auto. Ins. Co.*, 131 Ohio App.3d 172, 175 (8th Dist.1999). Accordingly, a reviewing court will not reverse an otherwise correct judgment merely because the lower court utilized different or erroneous reasons as the basis for its determination. *Diamond Wine & Spirits, Inc. v. Dayton Heidelberg Distrib. Co., Inc.*, 148 Ohio App.3d 596, 2002-Ohio-3932, ¶ 25 (3d Dist.), citing *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 222 (1994). Summary judgment is appropriate when, looking at the evidence as a whole: (1) there is no genuine

issue as to any material fact, and (2) the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). In conducting this analysis, the court must determine “that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, [the nonmoving] party being entitled to have the evidence or stipulation construed most strongly in the [nonmoving] party’s favor.” *Id.* If any doubts exist, the issue must be resolved in favor of the nonmoving party. *Murphy v. City of Reynoldsburg*, 65 Ohio St.3d 356, 358-359 (1992).

{¶11} The party moving for summary judgment has the initial burden of producing some evidence which demonstrates the lack of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). In doing so, the moving party is not required to produce any affirmative evidence, but must identify those portions of the record which affirmatively support his argument. *Id.* at 292. The nonmoving party must then rebut with specific facts showing the existence of a genuine triable issue; he may not rest on the mere allegations or denials of his pleadings. *Id.*; Civ.R. 56(E). Here, the facts are undisputed. Rather, the parties disagree on an issue of law.

Reconciling R.C. 4511.65 & R.C. 2744.02(B)(3)

{¶12} This court acknowledges that the requirements of R.C. 4511.65 make situations like this case confusing. R.C. 4511.65 reads, in part, “All state routes are hereby designated as through highways, provided that *stop signs * * * shall* be erected at all intersections with such through highways * * *.” (Emphasis added.)

{¶13} It is undisputed that East Sandusky Street in Findlay is also State Route 586, which makes East Sandusky Street a through highway. Thus, under R.C. 4511.65, a stop sign or other suitable traffic control device was required to be located at the intersection of East Sandusky Street and Wilson Street.

{¶14} R.C. 2744.02(B)(3) is part of the political subdivision immunity statute and provides that immunity will not apply if the state negligently fails to repair “public roads” or remove “obstructions” from “public roads.” The definition of “public roads,” stated *infra*, includes through highways, but not the traffic control devices located at those intersections. *See* R.C. 2744.01(H). Rather, “public roads” only includes those traffic control devices that are *mandated* by the Ohio manual of uniform traffic control devices (“OMUTCD”). *Id.* Under R.C. 2744.02(B)(3), not all stop signs are mandated. Therefore, it is possible to have the same stop sign considered mandatory under R.C. 4511.65, but not considered mandatory under R.C. 2744.02(B)(3). Only one of these statutes involves sovereign immunity, and since that is the issue here, R.C. 2744.02(B)(3) is controlling.

Political Subdivision Immunity

{¶15} R.C. Chapter 2744 governs political subdivision tort liability and immunity. *Brady v. Bucyrus Police Dept.*, 194 Ohio App.3d 574, 2011-Ohio-2460, ¶ 44 (3d Dist.). To determine whether a political subdivision is entitled to immunity under R.C. Chapter 2744, a reviewing court must engage in a three-tiered analysis. *Ward v. City of Napoleon*, 3d Dist. Henry No. 7-07-14, 2008-Ohio-4643, ¶ 11, citing *Cramer v. Auglaize*

Acres, 113 Ohio St.3d 266, 2007-Ohio-1946, ¶ 14. First, the court must determine whether the entity claiming immunity is a political subdivision and whether the alleged harm occurred in connection with either a governmental or a proprietary function. R.C. 2744.02(A)(1); *Cramer* at ¶ 14. The general rule is that political subdivisions are not liable in damages. *Hubbard v. Canton City School Bd. of Edn.*, 97 Ohio St.3d 451, 2002-Ohio-6718, ¶ 10, *superseded by statute on other grounds as stated in Roberts v. Switzerland of Ohio Local School Dist.*, 7th Dist. Monroe No. 12MO8, 2014-Ohio-78 ¶ 16. If the entity is a political subdivision entitled to immunity, then the court must determine whether any of the exceptions enumerated in R.C. 2744.02(B) apply. *Id.* at ¶ 12, citing *Cater v. City of Cleveland*, 83 Ohio St.3d 24, 28 (1998), *abrogated on other grounds by M.H. v. City of Cuyahoga Falls*, 134 Ohio St.3d 65, 2012-Ohio-5336, ¶ 11. If any of the exceptions apply, then the political subdivision can reinstate its immunity by showing that an R.C. 2744.03 defense applies. *Cater* at 28.

{¶16} Here, the Biblers do not dispute that the City is a political subdivision and qualifies for general immunity. Therefore, we find that the city has satisfied the first tier and is entitled to immunity under R.C. 2744.02(A)(1).

{¶17} Moving to the second tier, R.C. 2744.02(B) removes the general statutory presumption of immunity for a political subdivision only under the following express conditions: (1) the negligent operation of a motor vehicle by an employee, R.C. 2744.02(B)(1), (2) the negligent performance of proprietary functions, R.C. 2744.02(B)(2), (3) the negligent failure to keep public roads open and in repair, R.C.

2744.02(B)(3), (4) the negligence of employees occurring within or on the grounds of certain buildings used in connection with the performance of governmental functions, R.C. 2744.02(B)(4), and (5) express imposition of liability by statute, R.C. 2744.02(B)(5).

{¶18} Once general immunity has been established by the political subdivision, the burden lies with the plaintiff to show that one of the recognized exceptions applies. *Brady*, 2011-Ohio-2460, at ¶ 47, citing *Maggio v. City of Warren*, 11th Dist. Trumbull No. 2006-T-0028, 2006-Ohio-6880, ¶ 38.

{¶19} The Biblers argue that the stop sign involved in the accident falls under the definition of “public roads,” which would strip the City of immunity under R.C. 2744.02(B)(3). Thus, the crux of this case is whether the stop sign located at the intersection of Sandusky Street and Wilson Street is included in the definition of “public roads,” which requires this court to look at the language of the statute. We are mindful that when “the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation.” *State v. Taylor*, 114 Ohio App.3d 416, 422 (2d Dist.1996).

{¶20} “Public Roads” are defined as “public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. ‘Public roads’ *does not include* berms, shoulders, rights-of-way, or *traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.*” (Emphasis added.) R.C. 2744.01(H). The definition of “traffic control devices” includes stop signs like the

one in this case. *See* R.C. 4511.01(QQ). At the time of the accident, the relevant edition of the OMUTCD was the 2005 edition, second revision.

{¶21} The question then becomes what is the meaning of the word “mandated” in reference to the OMUTCD. The Biblers argue that “mandated” means any traffic control device that is approved for use. Specifically, once a stop sign is approved for use, it constitutes a device mandated by the OMUTCD and is considered part of the public roadway. However, the City argues that “mandated” means only traffic control devices that must be erected in a specific location under the OMUTCD.

{¶22} If we were to adopt the Biblers’ interpretation, then all stop signs would be considered mandated by the OMUTCD, unless the signs did not match the designs as provided in the manual. We do not find this argument persuasive. We note that the General Assembly explicitly excluded “traffic control devices” from the definition of a “public road” unless they were mandated by the OMUTCD. *Walters v. City of Columbus*, 10th Dist. Franklin No. 07AP-917, 2008-Ohio-4258, ¶ 20. “By its clear language, it is evident that the General Assembly did not intend all erected traffic control devices to be considered part of a public road.” *Id.* The statute’s language is quite clear and unambiguous. It differentiates between traffic control devices that are and are not mandated by the OMUTCD.

The OMUTCD contains mandatory, advisory, and permissive conditions, differentiated by the use of the terms “shall, should, and may.” Standards using the word “shall” are considered mandatory. Standards using the word “should” are considered to be advising, but not mandating, the particular

signage or other device. Standards using the word “may” carry no requirement or recommendation.

Webb v. Edwards, 165 Ohio App.3d 158, 2005-Ohio-6379, ¶ 23 (4th Dist.).

{¶23} Sections 2B.04-06 of the OMUTCD regulate the use and maintenance of stop signs. Specifically, Section 2B.05, entitled “STOP Sign Applications,” states:

Guidance:

STOP signs *should* be used if engineering judgment indicates that one or more of the following conditions exist:

- A. Intersection of a less important road with a main road where application of the normal right-of-way rule would not be expected to provide reasonable compliance with the law;
- B. *Street entering a through highway or street* (O.R.C. Section 4511.65 provides information on through highways (see Appendix B2));
- C. Unsignalized intersection in a signalized area; and/or
- D. High speeds, restricted view, or crash records indicate a need for control by the STOP sign.

(Emphasis added.) The use of the word “should” instead of the word “shall” indicates that stop signs like the one at issue here are not mandatory. Rather, they are discretionary. Because the decision to erect the stop sign was discretionary, we find that it was not mandated by the OMUTCD. Thus, the stop sign does not fall under the definition of “public road.”

{¶24} Although the OMUTCD does not contain mandatory language in regard to the erection of stop signs, it does contain mandatory language regarding stop signs in other aspects. Section 2B.06 of the OMUTCD, entitled STOP Sign Placement, reads,

Standard:

The STOP sign shall be installed on the right side of the approach to which it applies. When the STOP sign is installed at this required location and the sign visibility is restricted, a Stop Ahead sign (see Section 2C.29) shall be installed in advance of the STOP sign.

The STOP sign shall be located as close as practical to the intersection it regulates, while optimizing its visibility to the road user it is intended to regulate.

STOP signs and YIELD signs shall not be mounted on the same post.

(Emphasis sic.)

{¶25} The OMUTCD does not suggest that all traffic control devices are discretionary. For example, a YIELD sign is required to be placed at the entrance to every roundabout. See OMUTCD Sec. 2B.09.

{¶26} The Biblers also argue that although the decision to erect the stop sign may have been discretionary, once the decision was made, the City had a duty to maintain the sign. In support of this argument, the Biblers cite to *Franks v. Lopez*, 69 Ohio St.3d 345 (1994). In *Franks*, the Supreme Court of Ohio interpreted the former R.C. 2744.02(B)(3), which provided that “political subdivisions are liable for injury caused ‘by their failure to keep public roads, highways, [and] streets * * * within the political subdivisions open, in repair, and free from nuisance.’ ” (Emphasis added.) *Franks* at 347, quoting former R.C. 2744.02(B)(3). The Court found that the failure to maintain a sign may constitute an actionable nuisance claim. *Id.* at 348. Further, it found that

Overhanging branches and foliage which obscure traffic signs, malfunctioning traffic signals, signs which have lost their capacity to

reflect, or even physical impediments such as potholes, are easily discoverable, and the elimination of such hazards involves no discretion, policy-making or engineering judgment. The political subdivision has the responsibility to abate them and it will not be immune from liability for its failure to do so.

Id. at 349.

{¶27} However, *Franks* was decided prior to the amendments of R.C. 2744.01(H) and 2744.02(B)(3), which became effective in April 2003. The amendments defined “public roads” and removed the nuisance language and replaced it with the current “obstruction” language. The Supreme Court of Ohio has found that this replacement was significant. See *Howard v. Miami Twp. Fire Div.*, 119 Ohio St.3d 1, 2008-Ohio-2792. The Court stated, “We are persuaded that the legislature’s action in amending R.C. 2744.02(B)(3) was not whimsy but a deliberate effort to limit political subdivisions’ liability for injuries and deaths on their roadways.” *Id.* at ¶ 26.

{¶28} Several other appellate courts have declined to follow *Franks* for this reason. See *Darby v. City of Cincinnati*, 1st Dist. Hamilton No. C-130430, 2014-Ohio-2426, ¶ 19; *Rastaedt v. City of Youngstown*, 7th Dist. Mahoning No. 12MA82, 2013-Ohio-750, ¶ 25; *Shope v. City of Portsmouth*, 4th Dist. Scioto No. 11CA3459, 2012-Ohio-1605, ¶ 29; *Hale v. CSX Transp.*, 2nd Dist. Montgomery Nos. 22546, 22547, 22592, 2008-Ohio-5644, ¶ 49; *Walters*, 2008-Ohio-4258 at ¶ 18 (10th District).

{¶29} Only the Sixth District has found *Franks* to be relevant to this analysis. See *Butler v. City Comm.*, 6th Dist. Erie No. E-10-026, 2011-Ohio-1143, ¶ 13. However, the Sixth District did not address the 2003 amendment of R.C. 2744.02(B)(3) in its opinion.

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See Darby at ¶ 18. For this reason, we decline to adopt the Sixth District's view. Rather, we join the numerous other appellate courts that have found *Franks* is no longer applicable to R.C. 2744.02(B)(3).

{¶30} At first glance, it may appear that this court and the other appellate courts are finding that the erection of stop signs is never required. That is certainly not the case. R.C. 4511.65 provides that stop signs must be erected under certain scenarios. This opinion is limited to the narrow question of whether the stop sign in this case is considered a "public road" for the purposes of sovereign immunity, and the answer is no.

{¶31} Accordingly, the Biblers' sole assignment of error is overruled.

{¶32} Having found no error prejudicial to the Biblers in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

SHAW, J., concurs.

WILLAMOWSKI, J., Dissents.

{¶34} I respectfully dissent from the majority opinion and would reverse the trial court's granting of summary judgment. While I agree with the majority that not all traffic control devices are mandated by the OMUTCD, in this case, a traffic control device was mandated at this intersection by statute, which the majority acknowledges. *See* R.C. 4511.65 and ¶ 13. No administrative agency has the authority to pass rules which contradict a statutory mandate. *Williams v. Spitzer Autoworld Canton, L.L.C.*, 122 Ohio

St.3d 546, 2009-Ohio-3554, 913 N.E.2d 410, ¶18. Although the OMUTCD appears to make the location of the traffic control device optional, in this case, at this intersection, the statute says they are mandatory. The City of Findlay had the option of which particular traffic control device to use at this intersection and could have chosen something other than a "Stop" sign, such as a flashing red light, but it did not have an option as to whether a traffic control device was placed at this intersection. To follow the logic of the majority, no specific traffic control device would ever be mandated merely because the OMUTCD uses the word "should" instead of "shall". This despite the fact that R.C. 4511.65 clearly mandates a traffic control device be placed at locations such as the intersection in this case. Once the City of Findlay chose the "Stop" sign, in lieu of any other traffic control device, as the traffic control device to be used at the intersection in question, that "Stop" sign became the mandated traffic control device. That makes it part of the public road.

{¶35} Additionally, even if the placement of the "Stop" sign was not mandated, a "Stop Ahead" sign was mandated if the visibility was restricted. OMUTCD Section 2B.06 and ¶ 25. Since no "Stop Ahead" sign was present and there was a question of fact regarding the visibility of the "Stop" sign, a mandatory traffic control device was missing. Thus, the City may not be immune from liability in this case. A reasonable jury could conclude, viewing the evidence in a light most favorable to the injured party, that the City failed to maintain the public road by keeping the view of the "Stop" sign unobstructed or by failing to place a "Stop Ahead" sign as required by OMUTCD, in

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which case, the City of Findlay would not be immune from liability. Therefore, I would reverse the trial court's grant of summary judgment and remand the matter for trial.

/jlr

APPENDIX D

HANCOCK COUNTY, OHIO
FILED

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CAROL PROSSER BILLOUA
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HANCOCK COUNTY, OHIO

Gary L. Bibler, et al. :
Plaintiffs : Case No. 2013 CV 243
v. : **JUDGMENT ENTRY OF DISMISSAL**
Jill D. Stevenson, et al. : **OF ALL PARTIES AND CLAIMS**
Defendants : Judge Niemeyer

This 16th day of September, 2014, this cause came on for consideration of the joint motion of Plaintiff and Defendant Jill D. Stevenson for dismissal of the claims herein and the court being fully advised in the premises finds that Plaintiffs and Defendant Jill D. Stevenson have settled their claims as to each other and the Court having previously dismissed the claims of Plaintiffs and Defendant Jill Stevenson against Defendant City of Findlay on Summary Judgment that this cause should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED that this case is hereby dismissed with prejudice to all parties on all issues with costs taxed to Defendant Jill Stevenson.

It is so Ordered.

Joseph H. Niemeyer
Honorable Joseph H. Niemeyer
Judge of Said Court



Drake, Phillips,
Kuenzli & Clark

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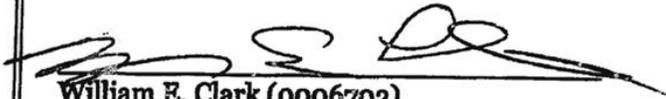
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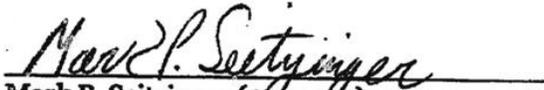
JUDGMENT ENTRY OF DISMISSAL OF ALL PARTIES AND CLAIMS
Bibler, et al. v. Stevenson, et al. - Case No. 2013 CV 243

Approved:

DRAKE, PHILLIPS, KUENZLI & CLARK



William E. Clark (0006702)
Attorney for Plaintiffs



Mark P. Seitzinger (0041407)
Attorney for Defendant Jill D. Stevenson

APPENDIX E

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HANCOCK COUNTY, OHIO
FILED

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CITY OF FINDLAY, OHIO
CLEVELAND COUNTY, OHIO

IN THE COMMON PLEAS COURT OF HANCOCK COUNTY, OHIO

GARY L. BIBLER, et al.,

Case No. 2013 CV 243

Plaintiffs,

vs.

**DECISION &
JUDGMENT ENTRY**

JILL D. STEVENSON, et al.,

Defendants.

April 8, 2014

This day this cause came before the Court for decision and ruling on the motion for summary judgment filed by Defendant City of Findlay ("Findlay") through its counsel of record Donald J. Rasmussen on December 6, 2013. Defendant Jill D. Stevenson ("Stevenson") filed a Memorandum in Opposition to Defendant City of Findlay's Motion for Summary Judgment on December 30, 2013 through her counsel of record Mark P. Seitzinger. As a part of Defendant Stevenson's memorandum in opposition, the Court has excerpts from the depositions of Defendant Stevenson and Kevin Spieker, a police officer for Defendant, City of Findlay, Ohio.

Plaintiffs filed a Motion for Extension of Time to file responsive pleadings on December 23, 2013, through their counsel of record William E. Clark. The Court granted this motion and allowed Plaintiffs until January 15, 2014, to file a response. Plaintiffs filed their Response to City of Findlay's Motion for Summary Judgment on January 15, 2014. In addition, the Court has the complete deposition of Defendant Stevenson, taken on October 25, 2013, and filed of record on

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February 11, 2014, and the complete deposition of Kevin Spieker, taken on October 25, 2013, and filed of record on January 15, 2014.

STATEMENT OF THE CASE

This matter relates to an automobile accident on May 27, 2011, wherein Plaintiff Gary L. Bibler ("Bibler") was operating his 1991 Ford F150 pick-up truck eastbound on East Sandusky Street in the City of Findlay and Defendant Jill Stevenson was the owner and operator of a 2002 Buick Regal traveling Northbound on Wilson Street. Plaintiff alleges that Defendant Stevenson failed to stop at a stop sign and collided with Plaintiff Bibler who enjoyed the right-of-way. Plaintiffs have brought suit against Defendant Stevenson alleging her negligence in failing to stop at the intersection and against the City of Findlay alleging that they negligently permitted foliage from a tree, planted within the street right-of-way, to obscure the stop sign at the intersection of Wilson Street and East Sandusky Street in the city of Findlay. Officer Kevin Spieker of the Findlay Police Department investigated the incident after the accident and testified that he felt there was enough of a view obstruction that something should be done about the tree, noting that an accident had previously occurred at that intersection on September 13, 2010, less than nine months prior to the accident which forms the basis of Plaintiffs' complaint.

Findlay asserts that it is entitled to summary judgment pursuant to Ohio Revised Code section 2744, the political subdivision immunity statute in that it is a political subdivision as defined in R.C. §2744.01(F) and engaged in a governmental function pursuant to R.C. §2744.01(C)(2)(e). Defendant Findlay asserts that once general immunity has been established the burden lies with the opposing party to show one of the recognized exceptions to immunity exists as are outlined in R.C. §2744.02(B).

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Stevenson alleges that the City of Findlay has failed to set forth evidence in support of its motion as required by Civ.R. 56 and that the City of Findlay is not immune under R.C. §2744 because 2744.02(B)(3) provides that a political subdivision is liable for injury caused by negligent failure to remove obstructions from public roads. Bibler asserts that the City of Findlay is not entitled to summary judgment because it has failed to meet its evidentiary burden as required by Civ.R. 56 and further that pursuant to R.C. §2744.02(B)(3) an exception exists to the statutory grant of immunity.

STANDARD OF REVIEW

The requirements and parameters of summary judgment are set forth in Civil Rule 56 of the Ohio Rules of Civil Procedure. Civil Rules 56(A) and (B) provide that both parties, those seeking affirmative action and defending parties, are permitted to move for summary judgment. The Ohio Supreme Court has held that Civil Rule 56(A) makes summary judgment available to a "party seeking to recover upon a claim" while Civil Rule 56(B) makes summary judgment available to a "party *against whom* a claim is asserted." *Robinson v. B.O.C. Group* (1998), 81 Ohio St.3d 361, 367, 691 N.E.2d 667, 671 (emphasis in original).

The evidence that may be set forth, and how that evidence must be construed by the Court when determining the appropriateness of summary judgment, is set forth in Civil Rule 56(C). This portion of the Rule states that:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary

judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Civ. R. 56(C).

Any supporting or opposing affidavits must "be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated in the affidavit." Civ. R. 56(E).

In interpreting Rule 56(C), the Ohio Supreme Court has stated that prior to summary judgment being granted, a court must determine that "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267, 274. The party moving for summary judgment bears the burden of establishing that no genuine issue of material fact exists. The moving party is also required to show, through some type of evidence specified in Civil Rule 56(C), that the "nonmoving party has no evidence to support [its] claims." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264, 274. While the moving party is not required to present any affirmative evidence in support of its motion, it does bear "the initial responsibility of informing the trial court of the basis for that motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher*, 75 Ohio St.3d at 292.

If the moving party is able to satisfy its initial burden, the nonmoving party is then required to fulfill its burden, outlined in Civil Rule 56(E). This burden requires that the nonmoving party present specific facts that show there is a genuine issue for trial. These facts

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are to be set forth using evidence specified in Rule 56(C). The nonmoving party may not rest on the mere allegations contained in its pleadings. *State ex rel. Burns v. Athens County Clerk of Courts* (1998), 83 Ohio St.3d 523, 524, 700 N.E.2d 1260, 1261.

CONCLUSIONS OF LAW

I. Civ.R. 56 Standard

Plaintiff Bibler and Defendant Stevenson assert that the City of Findlay's motion for summary judgment should be denied because the City of Findlay has failed to put forth any evidence whatsoever in support of its position that it is entitled to the general immunity provided in R.C. §2744. Civ.R. 56(C) provides the following:

The motion shall be served at least fourteen days before the time fixed for hearing. The adverse party, prior to the day of hearing, may serve and file opposing affidavits. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. *A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.* A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Civ.R. 56(C) (emphasis added).

The parties have conceded that the facts are largely undisputed. The motion for summary judgment before the Court depends not on a question of fact but upon a question of law: to wit,

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whether the City of Findlay is entitled to immunity pursuant to R.C. § 2744 under the facts which have been provided to this Court and are not in dispute from the depositions of Defendant Stevenson and police officer Spieker. The argument for summary judgment asserted by the City of Findlay stands on the factual background set forth in the pleadings, which may be reviewed by the Court when ruling on a motion for summary judgment pursuant to Civ.R. 56. The City of Findlay may assert that there is no genuine issue of material fact and it falls upon the responding parties to show with evidence outside of the pleadings that there exists a genuine issue of material fact and that reasonable minds may differ.

II. Political Subdivision Immunity

“Under Ohio's Political Subdivision Tort Liability Act, codified under R.C. Chapter 2744, it is well-established that a reviewing court must engage in a three-tiered analysis to determine whether a political subdivision is entitled to immunity from civil liability.” *Contreras v. Village of Bettsville*, 3rd Dist. Seneca No. 13-10-48, 2011-Ohio-4178, ¶22 (citing *Hubbard v. Canton Cty. Sch. Bd. of Edn.*, 97 Ohio St.3d 451, 2002-Ohio-6718, 780 N.E.2d 543, ¶10) “The first tier of the analysis is to determine whether the entity claiming immunity is a political subdivision and whether the harm occurred in connection with a governmental or proprietary function.” *Id.* (citing R.C. 2744.02(A)(1); *Hubbard* at ¶10). “Generally, political subdivisions are not liable for damages in civil actions for the ‘injury, death, or loss to a person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.’” *Id.* (citing R.C. 2744.02(A)(1)).

“However, the immunity established under R.C. 2744.02(A)(1) is not absolute; and the subdivision's immunity is subject to a list of exceptions under R.C. 2744.02(B)(1)-(5). Once general immunity has been established by the political subdivision, the burden lies with the plaintiff to show that one of the five exceptions under R.C. 2744.02(B) apply.” *Id.* (citations omitted). “Thus, if the entity is a political subdivision entitled to immunity under the first tier of the analysis, then the court must go to the second tier of the analysis and determine whether any of the exceptions to liability enumerated in R.C. 2744.02(B) apply.” *Id.* (citing *Hubbard* at ¶12). “If any of the exceptions to immunity are found to be applicable, then the political subdivision will lose its immunity. If this occurs, then the court must move on to the third tier of the analysis, where it must determine whether the political subdivision's immunity can be reinstated as long as the political subdivision proves one of the defenses to liability under R.C. 2744.03.” *Id.*

In the present case no one has disputed that the City of Findlay is a political subdivision, R.C. §2744.01(F), and that the regulation of the use of, and maintenance and repair of, roads, highways, streets, avenues, alleys . . . and public grounds” constitutes a “governmental function.” R.C. §2744.01(C)(2)(e). “Governmental functions” also includes the regulation and erection/non-erection of traffic signs. R.C. §2744.01(C)(2)(j). As such the Court finds that the City of Findlay has satisfied the first tier of analysis. The burden therefore shifts to the Defendant Stevenson and/or Plaintiff Bibler to show that one of the exceptions provided in R.C. §2744.02(B) apply.

Defendant Stevenson and Plaintiffs Bibler assert that the City of Findlay is not entitled to governmental immunity because of R.C. 2744.02(B)(3), which provides, in part, that “political subdivisions are liable for injury, death, or loss to person or property caused by their *negligent failure to keep public roads in repair* and other *negligent failure to remove obstructions* from

public roads. . . ." See *Crabtree v. Cook*, 10th Dist. Franklin No. 10AP-343, 196 Ohio App.3d 546, 2011-Ohio-5612; *Todd v. City of Cleveland*, 8th Dist. No. 98333, 2013-Ohio-101. The City of Findlay points to *Howard v. Miami Twp. Fire Div.*, 119 Ohio St.3d 1, 2008-Ohio-2792 to support its position that R.C. §2744.02(B)(3) does not apply to the facts set forth in this matter.

In *Howard*, the Supreme Court of Ohio reviewed the recently amended R.C. §2744.02(B)(3), which previously required political subdivisions to keep roadways "free from nuisance" but now requires political subdivisions to "remove obstructions" from public roadways, and concluded that the term "obstruction" as used in R.C. §2744.02(B)(3) means "an obstacle that blocks or clogs the roadway and not merely a thing or condition that hinders or impedes the use of the roadway or that may have the potential to do so." *Howard* at ¶30. Defendant Stevenson and Plaintiff Bibler assert that the definition of "obstruction" used in *Howard* is unreasonably broad and also that the negligence of the City of Findlay arose from their failure to keep the intersection *in repair*.

It is important to note that the Plaintiffs assert that the City of Findlay negligently permitted foliage to block the view of a *stop sign*. The parties seemingly concur that a stop sign is considered part of "public roads" which would fall under R.C. §2744.02(B)(3). The Court notes that "public roads" as used in R.C. §2744.02(B)(3) means "public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. *Public roads* does not include *berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.*" R.C. §2744.01(H) (emphasis added). Stop signs are included in the definition of "traffic control devices" set forth in R.C. §4511.01. There is no evidence as to whether the stop sign in question is mandated by the Ohio manual of traffic control devices since no party presented evidence of such to the Court. If the

stop sign was not mandated, R.C. §2744.02(B)(3) would not apply and the City of Findlay would be entitled to immunity. See *Walters v. City of Columbus*, 10th Dist. No. 07AP-917, 2008-Ohio-4258, ¶23. If the stop sign was mandated then it would fall under a public road and R.C. §2744.02(B)(3) may apply. *Id.* In *Walters*, which the Court finds to be quite analogous to the facts presented in this matter, the plaintiff alleged that the city of Columbus was negligent in failing to remove an obstruction from the stop sign (overhanging tree branches) and in failing to maintain and repair a public road. The Court found, after review of the Ohio Manual of Traffic Control Devices ("OMUTCD"), found that the stop sign was not mandatory and therefore not within the definition of "public roads" as used in R.C. §2744.02(B)(3), so immunity applied.

The burden rests with the Plaintiffs Bibler and Defendant Stevenson to show that an exception to political subdivision immunity applies once the City of Findlay has shown that it is a political subdivision engaging in governmental functions. *Contreras* at ¶23 (citations omitted). It was therefore incumbent upon Plaintiffs Bibler and Defendant Stevenson to show that the traffic control device in question was mandatory under the OMUTCD and consequently within the definition of "public roads" as used in R.C. §2744.02(B)(3). Plaintiffs Bibler and Defendant Stevenson have failed to carry that burden. As a result the Court finds that the Defendant City of Findlay is entitled to political subdivision immunity pursuant to R.C. §2744.01(A)(1) and that there is no exception which applies.

CONCLUSION

The Defendant City of Findlay has satisfied the first tier of political subdivision immunity analysis and shown that it is entitled to immunity. The Plaintiff Bibler and Defendant Stevenson have failed to meet their burden of showing that an exception to immunity applies pursuant to R.C. §2744.02(B)(3). It is therefore **ORDERED, ADJUDGED AND DECREED**

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R387-1580

that Defendant City of Findlay's Motion for Summary Judgment is found well taken and granted.

The City of Findlay is therefore dismissed from this action with prejudice.

This matter shall proceed to trial between the remaining parties as scheduled on May 19, 2014, at 8:30 a.m.

All until further Order of the Court.


JOSEPH H. NIEMEYER, JUDGE

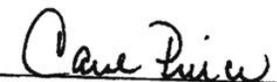
CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 8th, 2014, a time-stamped copy of the foregoing was delivered to counsel for the parties as follows:

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By placing a copy of same in his delivery box in the Clerk's Office


Carol Pierce, Judicial Assistant

000035
C387-1581

APPENDIX F

HANCOCK COUNTY, OHIO
FILED

2014 MAY 14 P 2:39

CATHY PROSSER WILCOX
CLERK

IN THE COMMON PLEAS COURT OF HANCOCK COUNTY, OHIO

GARY L. BIBLER, et al.,

Case No. 2013 CV 243

Plaintiffs,

vs.

DECISION &
ORDER

JILL D. STEVENSON, et al.,

Defendants.

May 14, 2014

This matter is before the Court for consideration and ruling on separate Motions for Reconsideration of the Court's Summary Judgment Decision filed by the Plaintiffs Gary L. Bibler and Yvonne Bibler on April 23, 2014 through their counsel of record William E. Clark, and by the Defendant Jill D. Stevenson on April 25, 2014, through her counsel of record Mark P. Seitzinger. The Defendant City of Findlay filed a response on April 30, 2014, through its counsel of record Donald J. Rasmussen.

The Court previously granted summary judgment in favor of the Defendant City of Findlay in an Entry filed April 8, 2014, after finding that sovereign immunity applied pursuant to R.C. §2744 and that the City of Findlay consequently could not be found liable as to the events of May 27, 2011. The Court determined that the Plaintiff Bibler and Defendant Stevenson failed to establish that an exception to the sovereign immunity statute applied. See *Hubbard v. Canton Cty. Sch. Bd. of Edn.*, 97 Ohio St.3d 451, 2002-Ohio-6718, ¶ 12.

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R389-314

Bibler and Stevenson have moved this Court to reconsider its prior ruling, asserting that the language set forth in R.C. 2744.01(H) which provides that stop signs are not included in the definition of public roads unless they are "mandated by the Ohio manual of uniform traffic control devices ('OMUTCD')" is satisfied because the intersection in question mandates the placement of a traffic control device. Plaintiff asserts that R.C. §4511.65(A) mandates the placement of a stop sign or other traffic control device at an intersection of a through highway. When read in its entirety, R.C. §4511.65(A) also provides that the "mandatory" traffic control device may be omitted at the discretion of the director of transportation. R.C. 4511.65(A) does not mandate the placement of a stop sign or other traffic control device at the intersection in question. Moreover, R.C. §2744.01(H) provides that a stop sign or other traffic device constitutes a public road *only* if the traffic control device is mandated by the OMUTCD. R.C. §2744.01(H) (Emphasis added). No reference to R.C. §4511.65(A) is made within the sovereign immunity statutes.

Defendant Stevenson asserts that R.C. §4511.65 mandates the placement of a stop sign at a through highway and that Section 2B.05 of the OMUTCD entitled "STOP Sign Application" specifically incorporates the definition of a "through highway" under R.C. §4511.65- thus, the stop sign at issue is mandated. This argument is not an accurate representation of Section 2B.05. Section 2B.05 of the OMUTCD provides that stop signs *should* be used at a street entering a through highway, but this is clearly marked as guidance rather than a mandate. (Emphasis added). The mandates are located within the **Standard** section within Section 2B.05 of the OMUTCD. (Emphasis in original).

Upon review of this matter the Court finds that it appropriately applied the law to the facts as presented by the parties and that the City of Findlay is entitled to sovereign immunity

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R389-3105

pursuant to R.C. 2744. The Court concurs with the interpretation of the law as set forth in *Walters v. City of Columbus*, 10th Dist. No. 07AP-917, 2008-Ohio-4258, which provides that stop signs are not included within the definition of "public roads" as used in R.C. §2744.02(B)(3) unless they are mandated by the OMUTCD, and will follow the 10th District's interpretation in this action. *Walters* at ¶ 12. The Court has now reviewed the OMUTCD and finds that the stop sign in question is not mandated and therefore does not fall within the definition of a "public road" as used in R.C. §2744.02(B)(3). As such, Plaintiff Bibler and Defendant Stevenson have failed to establish the existence of an exception to the sovereign immunity statute and Defendant City of Findlay is entitled to summary judgment.

CONCLUSION

Based upon the foregoing analysis, it is therefore **ORDERED, ADJUDGED AND DECREED** that Plaintiff Gary L. Bibler and Defendant Jill D. Stevenson's Motions for Reconsideration are found not well taken and accordingly denied.

This matter shall proceed to mediation between the remaining parties as scheduled on May 19, 2014, at 9:30 a.m.

All until further Order of the Court.


JOSEPH H. NIEMEYER, JUDGE

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0389-300

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on May 14th, 2014, a time-stamped copy of the foregoing was delivered to counsel for the parties as follows:

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Carol Pierce, Judicial Assistant

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R389-367

APPENDIX G

Standard:

All regulatory traffic control devices shall be supported by laws, ordinances, or regulations.

Support:

Provisions of this Manual are based upon the concept that effective traffic control depends upon both appropriate application of the devices and reasonable enforcement of the regulations.

Section 1A.09 Engineering Study and Engineering Judgment**Standard:**

This Manual describes the application of traffic control devices, but shall not be a legal requirement for their installation.

Guidance:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment.

Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement. Jurisdictions with responsibility for traffic control that do not have engineers on their staffs should seek engineering assistance from others, such as the Ohio Department of Transportation (ODOT), their County, a nearby large City, or a traffic engineering consultant.

Section 1A.10 Interpretations, Experimentations, Changes, and Interim Approvals**Standard:**

Design, application, and placement of traffic control devices other than those adopted in this Manual shall be prohibited unless the provisions of this Section are followed.

Support:

Continuing advances in technology will produce changes in the highway, vehicle, and road user proficiency; therefore, portions of the system of traffic control devices in this Manual will require updating. In addition, unique situations often arise for device applications that might require interpretation or clarification of this Manual. It is important to have a procedure for recognizing these developments and for introducing new ideas and modifications into the system.

Standard:

Except as provided in the following Option, requests for any permission to experiment or interim approval shall be submitted electronically to the Federal Highway Administration (FHWA), Office of Transportation Operations, MUTCD team, at the following e-mail address: MUTCDofficialrequest@dot.gov. A copy of the request shall be sent to the Ohio Department of Transportation (ODOT), Office of Traffic Engineering (see page ii for contact information).

Requests for interpretations or changes shall be sent to the Ohio Department of Transportation (ODOT), Office of Traffic Engineering (see page ii for contact information).

Option:

If electronic submission to FHWA is not possible, requests for permission to experiment or interim approval may instead be submitted to the Office of Transportation Operations HOTP-1, Federal Highway Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

Support:

An interpretation includes a consideration of the application and operation of standard traffic control devices, official meanings of standard traffic control devices, or the variations from standard device designs.

OMUTCD - English units are preferred.

Guidance:

Requests for an interpretation of this Manual should contain the following information:

- A. A concise statement of the interpretation being sought;
- B. A description of the condition that provoked the need for an interpretation;
- C. Any illustration that would be helpful to understand the request; and
- D. Any supporting research data that is pertinent to the item to be interpreted.

Support:

Requests to experiment include consideration of field deployment for the purpose of testing or evaluating a new traffic control device, its application or manner of use, or a provision not specifically described in this Manual.

A request for permission to experiment will be considered only when submitted by the public agency or private toll facility responsible for the operation of the road or street on which the experiment is to take place.

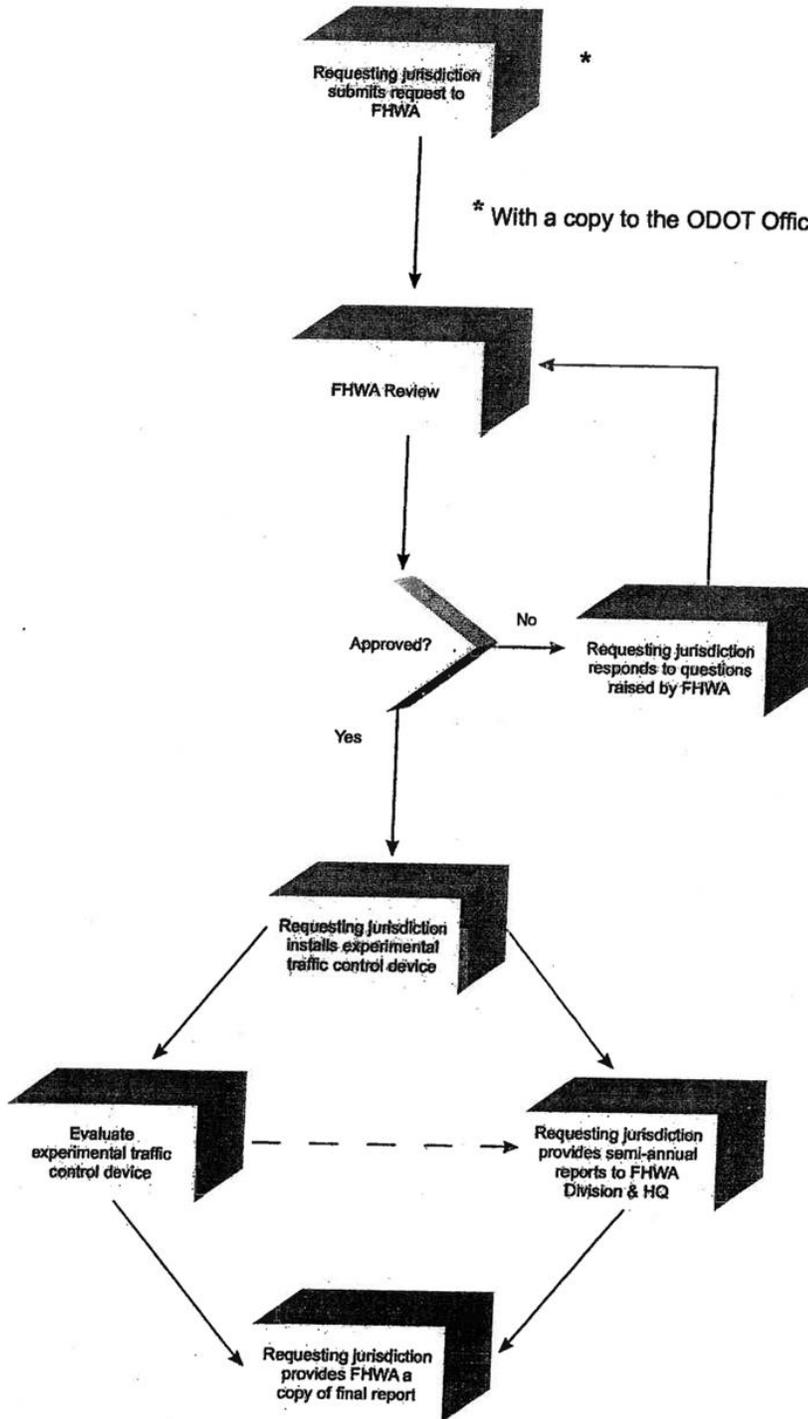
A diagram indicating the process for experimenting with traffic control devices is shown in Figure 1A-1.

Guidance:

The request for permission to experiment should contain the following:

- A. A statement indicating the nature of the problem.
- B. A description of the proposed change to the traffic control device or application of the traffic control device, how it was developed, the manner in which it deviates from the standard, and how it is expected to be an improvement over existing standards.
- C. Any illustration that would be helpful to understand the traffic control device or use of the traffic control device.
- D. Any supporting data explaining how the traffic control device was developed, if it has been tried, in what ways it was found to be adequate or inadequate, and how this choice of device or application was derived.
- E. A legally binding statement certifying that the concept of the traffic control device is not protected by a patent or copyright. (An example of a traffic control device concept would be countdown pedestrian signals in general. Ordinarily an entire general concept would not be patented or copyrighted, but if it were it would not be acceptable for experimentation unless the patent or copyright owner signs a waiver of rights acceptable to the FHWA. An example of a patented or copyrighted specific device within the general concept of countdown pedestrian signals would be a manufacturer's design for its specific brand of countdown signal, including the design details of the housing or electronics that are unique to that manufacturer's product. As long as the general concept is not patented or copyrighted, it is acceptable for experimentation to incorporate the use of one or more patented devices of one or several manufacturers.)
- F. The time period and location(s) of the experiment.
- G. A detailed research or evaluation plan that must provide for close monitoring of the experimentation, especially in the early stages of its field implementation. The evaluation plan should include before and after studies as well as quantitative data describing the performance of the experimental device.
- H. An agreement to restore the site of the experiment to a condition that complies with the provisions of this Manual within 3 months following the end of the time period of the experiment. This agreement must also provide that the agency sponsoring the experimentation will terminate the experimentation at any time that it determines significant safety concerns are directly or indirectly attributable to the experimentation. The FHWA's Office of Transportation Operations has the right to terminate approval of the experimentation at any time if there is an indication of safety concerns. If, as a result of the experimentation, a request is made that this Manual be changed to include the device or application being experimented with, the device or application will be permitted to remain in place until an official rulemaking action has occurred.

Figure 1A-1. Example of Process for Requesting and Conducting Experimentations for New Traffic Control Devices



OMUTCD - English units are preferred.

- I. An agreement to provide semiannual progress reports for the duration of the experimentation, and an agreement to provide a copy of the final results of the experimentation to the FHWA's Office of Transportation Operations within 3 months following completion of the experimentation. The FHWA's Office of Transportation Operations has the right to terminate approval of the experimentation if reports are not provided in accordance with this schedule.

Support:

Requests for changes to the Manual include consideration of a new device to replace a present standard device, an additional device to be added to the list of standard devices, or a revision to a traffic control device application or placement criteria.

Guidance:

Requests for a change to this Manual should contain the following information:

- A. A statement indicating what change is proposed;
- B. Any illustration that would be helpful to understand the request; and
- C. Any supporting research data that is pertinent to the item to be reviewed.

Support:

Requests for interim approval include consideration of allowing interim use, pending official rulemaking, of a new traffic control device, a revision to the application or manner of use of an existing traffic control device, or a provision not specifically described in this Manual. If granted, interim approval will result in the traffic control device or application being placed into the next scheduled rulemaking process for revisions to this Manual. The device or application will be permitted to remain in place, under any conditions established in the interim approval, until an official rulemaking action has occurred.

Interim approval is considered based on the results of successful experimentation, results of analytical or laboratory studies, and/or review of non-U.S. experience with a traffic control device or application. Interim approval considerations include an assessment of relative risks, benefits, and costs. Interim approval includes conditions that jurisdictions agree to comply with in order to use the traffic control device or application until an official rulemaking action has occurred.

Guidance:

The request for permission to place a traffic control device under interim approval should contain the following:

- A. A statement indicating the nature of the problem.
- B. A description of the proposed change to the traffic control device or application of the traffic control device, how it was developed, the manner in which it deviates from the standard, and how it is expected to be an improvement over existing standards.
- C. The location(s) where it will be used and any illustration that would be helpful to understand the traffic control device or use of the traffic control device.
- D. A legally-binding statement certifying that the concept of the traffic control device is not protected by a patent or copyright. (An example of a traffic control device concept would be countdown pedestrian signals in general. Ordinarily an entire general concept would not be patented or copyrighted, but if it were it would not be acceptable for interim approval unless the patent or copyright owner signs a waiver of rights acceptable to the FHWA. An example of a patented or copyrighted specific device within the general concept of countdown pedestrian signals would be a manufacturer's design for its specific brand of countdown signal, including the design details of the housing or electronics that are unique to that manufacturer's product. Interim approval of a specific patented or copyrighted product is not acceptable.)
- E. A detailed completed research or evaluation on this traffic control device.
- F. An agreement to restore the site(s) of the interim approval to a condition that complies with the provisions in this Manual within 3 months following the issuance of a final rule on this traffic control device. This agreement must also provide that the agency sponsoring the interim approval will terminate use of the device or application installed under the interim approval at any time that it

determines significant safety concerns are directly or indirectly attributable to the device or application. The FHWA's Office of Transportation Operations has the right to terminate the interim approval at any time if there is an indication of safety concerns.

Option:

The Ohio Department of Transportation (ODOT) may submit a request for interim approval for all jurisdictions in the State, as long as the request contains the information listed in the Guidance above.

Standard:

Once an interim approval is granted to any jurisdiction for a particular traffic control device or application, subsequent jurisdictions shall be granted interim approval for that device or application by submitting a letter to the FHWA Office of Transportation Operations indicating they will abide by Item F above and the specific conditions contained in the original interim approval.

A local jurisdiction using a traffic control device or application under an interim approval that was granted either directly to that jurisdiction or on a statewide basis based on the State's request shall inform the State of the locations of such use.

Support:

A diagram outlining FHWA's process for incorporating new traffic control devices into the national MUTCD is shown in Figure 1A-2.

For additional information concerning interpretations, experimentation, changes, or interim approvals, contact the ODOT, Office of Traffic Engineering at the address provided on page ii.

APPENDIX H

APPENDIX C. SIGNING INDEX

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Sec. 10C.09



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OMUTCD – Only English units are used on signs.

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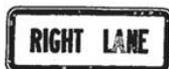
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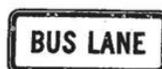
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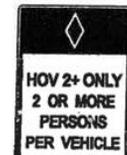
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OMUTCD - Only English units are used on signs.

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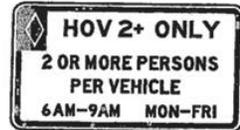
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OMUTCD – Only English units are used on signs.

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R7-9
Sec. 9B.09



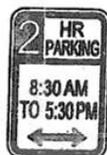
R7-9a
Sec. 9B.09



R7-107
Sec. 2B.39



R7-107a
Sec. 2B.39



R7-108
Sec. 2B.39

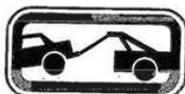


R7-200
Sec. 2B.39

OR



R7-201
Sec. 2B.39



R7-201a
Sec. 2B.39



R7-202
Sec. 2B.39



R7-203
Sec. 2B.39



R8-1
Sec. 2B.39



R8-2
Sec. 2B.39

OMUTCD – Only English units are used on signs.

Regulatory Signs - continued



R8-3
Sec. 2B.39



R8-3a
Sec. 2B.39



R8-3c
Sec. 2B.39



R8-3d
Sec. 2B.39



R8-4
Sec. 2B.42



R8-5
Sec. 2B.39



R8-6
Sec. 2B.39



R8-7
Sec. 2B.42



R8-8
Sec. 8B.07
Sec. 10C.05



R8-9
Sec. 8B.09
Sec. 10C.06



R8-10
Sec. 8B.10
Sec. 10C.08



R9-1
Sec. 2B.43



R9-2
Sec. 2B.44



R9-3
Sec. 2B.44



R9-3a
Sec. 2B.44



R9-3b
Sec. 2B.44



R9-3c
Sec. 9B.06



R9-4
Sec. 2B.43



R9-4a
Sec. 2B.43



R9-5
Sec. 9B.10



R9-6
Sec. 9B.10



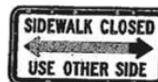
R9-7
Sec. 9B.11



R9-8
Sec. 6F.12



R9-9
Sec. 6F.13



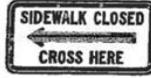
R9-10
Sec. 6F.13



R9-11
Sec. 6F.13

OMUTCD – Only English units are used on signs.

Regulatory Signs - continued



R9-11a
Sec. 6F.13



R10-1
Sec. 2B.45



R10-2
Sec. 2B.45



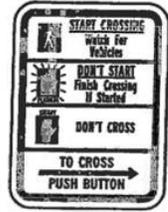
R10-2a
Sec. 2B.45



R10-3
Sec. 2B.45



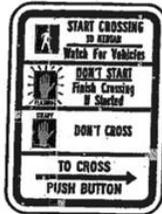
R10-3a
Sec. 2B.45



R10-3b
Sec. 2B.45



R10-3c
Sec. 2B.45



R10-3d
Sec. 2B.45



R10-3e
Sec. 2B.45



R10-4
Sec. 2B.45



R10-4a
Sec. 2B.45



R10-4b
Sec. 2B.45



R10-5
Sec. 2B.45



R10-6
Sec. 2B.45



R10-6a
Sec. 2B.45



R10-7
Sec. 2B.45



R10-8
Sec. 2B.45



R10-10
Sec. 2B.45



R10-11
Sec. 2B.45



R10-11a
Sec. 2B.45



R10-11b
Sec. 2B.45



R10-12
Sec. 2B.45



R10-13
Sec. 2B.45



R10-15
Sec. 2B.45

OMUTCD – Only English units are used on signs.

Regulatory Signs - continued



R10-16
Sec. 2B.45



R10-18
Sec. 2B.46



R10-19
Sec. 2B.46



R10-20a
Sec. 2B.45



OR



R10-21
Sec. 2B.45



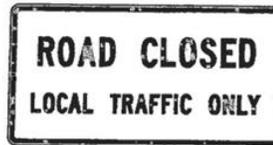
R10-22
Sec. 9B.12



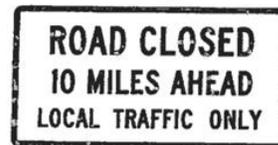
R11-1
Sec. 2B.47



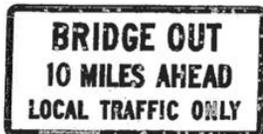
R11-2
Sec. 2B.48



R11-3
Sec. 2B.48



R11-3a
Sec. 2B.48



R11-3b
Sec. 2B.48



R11-4
Sec. 2B.48



R11-H5a
Sec. 6F.14.1



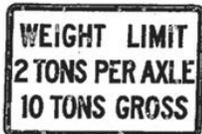
R12-1
Sec. 2B.49



R12-2
Sec. 2B.49



R12-3
Sec. 2B.49



R12-4
Sec. 2B.49



R12-5
Sec. 2B.49



R12-H5
Sec. 2B.49



R13-H1
Sec. 2B.50



R13-H2
Sec. 2B.50

OMUTCD - Only English units are used on signs.

Regulatory Signs - continued



R14-1
Sec. 2B.51



R14-2
Sec. 2B.52



R14-3
Sec. 2B.46



R15-1
Sec. 8B.03
Sec. 10C.02



R15-2
Sec. 8B.03
Sec. 10C.02



R15-3
Sec. 8B.05
Sec. 10C.10



R15-4a
Sec. 10C.13



R15-4b
Sec. 10C.13



R15-4c
Sec. 10C.13



R15-5
Sec. 10C.14



R15-5a
Sec. 10C.14



R15-6
Sec. 10C.12



R15-6a
Sec. 10C.12



R15-7
Sec. 10C.11



R15-7a
Sec. 10C.11



R15-8
Sec. 8B.16
Sec. 10C.17



R16-H3
Sec. 7B.15

Intentionally blank.

Warning Signs



W1-1
Sec. 2C.06



W1-1a
Sec. 2C.07



W1-2
Sec. 2C.06



W1-2a
Sec. 2C.07



W1-3
Sec. 2C.06



W1-4
Sec. 2C.06



W1-4b
Sec. 6F.46



W1-4c
Sec. 6F.46



W1-5
Sec. 2C.06



W1-6
Sec. 2C.09



W1-7
Sec. 2C.38



W1-8
Sec. 2C.10



W1-10
Sec. 2C.08



W1-11
Sec. 2C.06



W1-H11
Sec. 6F.41.1



W1-13
Sec. 2C.11



W1-15
Sec. 2C.06



W2-1
Sec. 2C.37



W2-2
Sec. 2C.37



W2-3
Sec. 2C.37



W2-4
Sec. 2C.37



W2-5
Sec. 2C.37



W2-6
Sec. 2C.37



W3-1
Sec. 2C.29



W3-1a
Sec. 2C.29



W3-2
Sec. 2C.29



W3-2a
Sec. 2C.29



W3-3
Sec. 2C.29



W3-3a
Sec. 2C.29



W3-4
Sec. 2C.29

OMUTCD – Only English units are used on signs.

Warning Signs – continued



W3-5
Sec. 2C.30



W3-5a
Sec. 2C.30



W3-6
Sec. 4I.02



W3-H12
Sec. 4B.02



W4-1
Sec. 2C.31



W4-2
Sec. 2C.33



W4-3
Sec. 2C.32



W4-4p
Sec. 2C.50



W4-5
Sec. 2C.31



W4-6
Sec. 2C.32



W4-7
Sec. 6F.23



W5-1
Sec. 2C.15



W5-2
Sec. 2C.16



W5-3
Sec. 2C.17



W5-4
Sec. 6F.26



W5-4a
Sec. 9B.18



W6-1
Sec. 2C.18



W6-1a
Sec. 2C.18



W6-1b
Sec. 2C.18



W6-2
Sec. 2C.19



W6-2a
Sec. 2C.19



W6-2b
Sec. 2C.19



W6-3
Sec. 2C.19



W6-4
Sec. 6F.70



W7-1
Sec. 2C.12



W7-1a
Sec. 2C.12



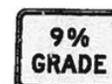
W7-1b
Sec. 2C.12



W7-2
Sec. 2C.12



W7-2b
Sec. 2C.12



W7-3
Sec. 2C.12

OMUTCD – Only English units are used on signs.

Warning Signs – continued



W7-3a
Sec. 2C.12



W7-3b
Sec. 2C.12



W7-4
Sec. 2C.13



W7-4b
Sec. 2C.13



W7-4c
Sec. 2C.13



W7-4d
Sec. 2C.13



W7-4e
Sec. 2C.13



W7-4f
Sec. 2C.13



W7-5
Sec. 9B.18



W7-6
Sec. 2C.14



W8-1
Sec. 2C.21



W8-2
Sec. 2C.21



W8-3
Sec. 2C.25



W8-4
Sec. 2C.26



W8-5
Sec. 2C.27



W8-6
Sec. 2C.40



W8-7
Sec. 2C.28.1



W8-8
Sec. 2C.28.1



W8-9
Sec. 2C.24



W8-9a
Sec. 2C.26



W8-10
Sec. 9B.16



W8-10p
Sec. 9B.16



W8-11
Sec. 6F.43



W8-H12
Sec. 6F.44



W8-H12a
Sec. 6F.44



W8-13
Sec. 2C.28



W9-1
Sec. 2C.33



W9-2
Sec. 2C.33



W9-3
Sec. 6F.22

OMUTCD – Only English units are used on signs.

Warning Signs - continued



W9-3a
Sec. 6F.22



W10-1
Sec. 8B.04
Sec. 10C.15



W10-1a
Sec. 8B.05
Sec. 10C.10



W10-2
Sec. 8B.04
Sec. 10C.15



W10-3
Sec. 8B.04
Sec. 10C.15



W10-4
Sec. 8B.04
Sec. 10C.15



W10-5
Sec. 8B.17
Sec. 10C.16



W10-7
Sec. 10C.17



W10-8
Sec. 8B.13



W10-9
Sec. 8B.14



W10-10
Sec. 8B.15



W10-11
Sec. 8B.18
Sec. 10C.18



W10-11a
Sec. 8B.18
Sec. 10C.18



W10-11b
Sec. 8B.18
Sec. 10C.18



W10-12
Sec. 8B.19
Sec. 10C.19



W10-13
Sec. 8B.15



W10-14
Sec. 8B.17



W10-14a
Sec. 8B.17



W10-15
Sec. 8B.17



W11-1
Sec. 9B.17



W11-2
Sec. 2C.41



W11-3
Sec. 2C.41



W11-4
Sec. 2C.41



W11-5
Sec. 2C.41



W11-5a
Sec. 2C.40



W11-6
Sec. 2C.41



W11-7
Sec. 2C.41



W11-8
Sec. 2C.40



W11-9
Sec. 2C.41



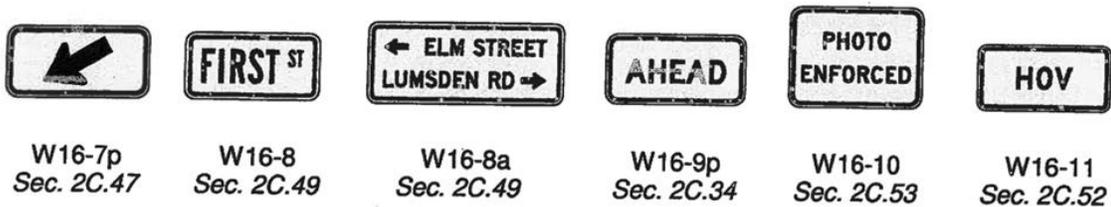
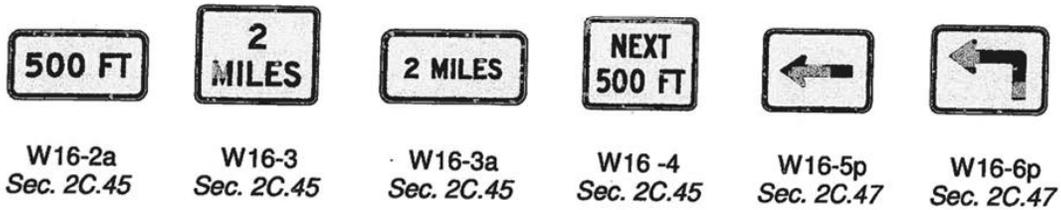
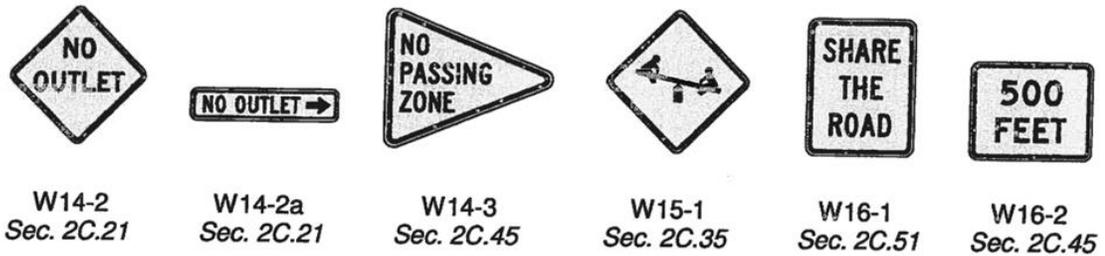
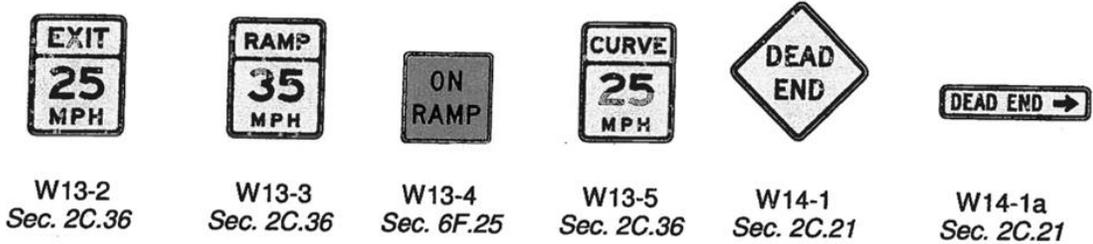
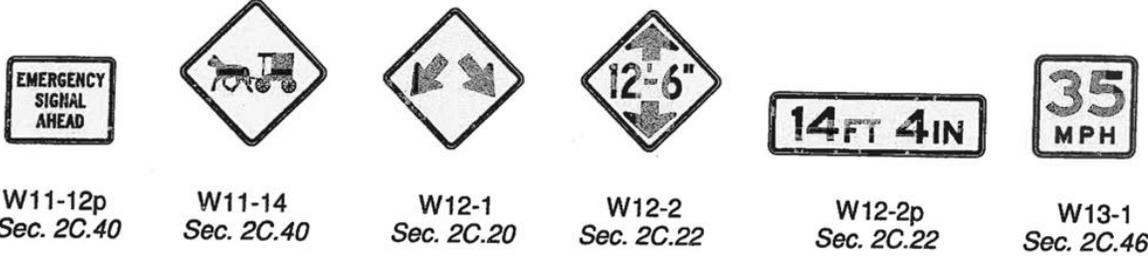
W11-10
Sec. 2C.40



W11-11
Sec. 2C.40

OMUTCD – Only English units are used on signs.

Warning Signs - continued



OMUTCD – Only English units are used on signs.

Warning Signs - continued



W16-12p
Sec. 2C.37



W16-13p
Sec. 2C.29



W17-1
Sec. 2C.24



W18-1
Sec. 5C.12



W20-1
Sec. 6F.17



W20-2
Sec. 6F.18



W20-3
Sec. 6F.19



W20-4
Sec. 6F.20



W20-5
Sec. 6F.21



W20-5a
Sec. 6F.21



W20-7
Sec. 6F.29



W20-7a
Sec. 6F.29



W21-1
Sec. 6F.31



W21-1a
Sec. 6F.31



W21-2
Sec. 6F.32



W21-3
Sec. 6F.33



W21-5
Sec. 6F.35



W21-5a
Sec. 6F.35



W21-5b
Sec. 6F.35



W21-6
Sec. 6F.36



W21-7
Sec. 6F.37



W22-1
Sec. 6F.39



W22-2
Sec. 6F.40



W22-3
Sec. 6F.49



W23-1
Sec. 6F.27



W24-1
Sec. 6F.45



W24-1a
Sec. 6F.45



W24-1b
Sec. 6F.45



W25-1
Sec. 2C.39



W25-2
Sec. 2C.39

OMUTCD – Only English units are used on signs.

Guide Signs – Marker Series



M1-1
Sec. 2D.11



M1-2
Sec. 2D.11



M1-3
Sec. 2D.11



M1-4
Sec. 2D.11



M1-5
Sec. 2D.11



M1-6
Sec. 2D.11



M1-H6a
Sec. 2D.11



M1-H6b
Sec. 2D.11



M1-7
Sec. 2D.11



M1-8
Sec. 9B.20



M1-9
Sec. 9B.20



M1-10
Sec. 2E.08



M2-1
Sec. 2D.13



M2-2
Sec. 2D.14



M3-1
Sec. 2D.15



M3-2
Sec. 2D.15



M3-3
Sec. 2D.15



M3-4
Sec. 2D.15



M4-1
Sec. 2D.17



M4-1a
Sec. 2D.17



M4-2
Sec. 2D.18



M4-3
Sec. 2D.19



M4-4
Sec. 2D.20



M4-5
Sec. 2D.21



M4-6
Sec. 2D.22



M4-7
Sec. 2D.23



M4-7a
Sec. 2D.23



M4-8
Sec. 6F.53



M4-8a
Sec. 6F.53



M4-8b
Sec. 6F.53

OMUTCD – Only English units are used on signs.

Guide Signs – Marker Series



M4-9
Sec. 6F.53



M4-9a
Sec. 6F.53



M4-9b
Sec. 6F.53



M4-9c
Sec. 6F.53



M4-10
Sec. 6F.53



M4-11
Sec. 9B.21



M4-12
Sec. 9B.21



M4-13
Sec. 9B.21



M5-1
Sec. 2D.25



M5-2
Sec. 2D.25



M6-1
Sec. 2D.26



M6-2
Sec. 2D.26



M6-3
Sec. 2D.26



M6-4
Sec. 2D.26



M6-5
Sec. 2D.26



M6-6
Sec. 2D.26



M6-7
Sec. 2D.26



M7-1
Sec. 9B.21



M7-2
Sec. 9B.21



M7-3
Sec. 9B.21



M7-4
Sec. 9B.21



M7-5
Sec. 9B.21



M7-6
Sec. 9B.21



M7-7
Sec. 9B.21



M8-H3
Sec. 2D.53



M8-H3p
Sec. 2D.53

OMUTCD – Only English units are used on signs.

Guide Signs- Directional Series



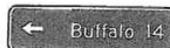
D1-1b
Sec. 9B.21



D1-1c
Sec. 9B.21



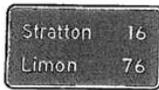
D1-H4
Sec. 2D.34



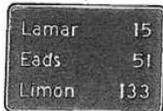
D1-H4a
Sec. 2D.34



D2-H1
Sec. 2D.36



D2-H2
Sec. 2D.36



D2-H3
Sec. 2D.36



D3-1
Sec. 2D.38



D3-2
Sec. 2D.39



D3-2
Sec. 2D.39



D3-2
Sec. 2D.39



D4-1
Sec. 2D.40



D4-2
Sec. 2D.41



D4-3
Sec. 9B.20



D5-1
Sec. 2D.42



D5-H1
Sec. 2E.52



D5-1a
Sec. 2E.52



D5-1b
Sec. 2E.52



D5-H1b
Sec. 2D.42



D5-2
Sec. 2D.42



D5-2a
Sec. 2E.52



D5-H2b
Sec. 2D.42



D5-3
Sec. 2D.42



D5-4
Sec. 2D.42



D5-5
Sec. 2D.42



D5-5a
Sec. 2D.42



D5-5b
Sec. 2D.42



D5-5c
Sec. 2D.42



D5-5d
Sec. 2D.42



D5-5e
Sec. 2D.42



D5-6
Sec. 2E.52



D5-H6
Sec. 2E.52



D5-7
Sec. 2E.52

OMUTCD – Only English units are used with signs.

Guide Signs- Directional Series



D5-H7 Sec. 2E.52 D5-7a Sec. 2E.53 D5-8 Sec. 2E.53 D5-9 Sec. 2E.53 D5-9a Sec. 2E.53 D5-10 Sec. 2E.53



D5-11 Sec. 2E.53 D6-1 Sec. 2D.43 Sec. 2E.52 D6-2 Sec. 2D.43 Sec. 2E.52 D6-3 Sec. 2D.43 Sec. 2E.52 D6-H3 Sec. 2D.43 D6-4 Sec. 2D.52 D6-4a Sec. 2D.52



D7-H4 Sec. 2H.09 D7-H4a Sec. 2H.09 D8-1 Sec. 2D.44 D8-2 Sec. 2D.44 D8-H2 Sec. 2D.44



D8-3 Sec. 2D.44 D9-1 Sec. 2D.45 D9-2 Sec. 2D.45 D9-3 Sec. 2D.45 D9-3a Sec. 2D.45 D9-4 Sec. 2D.45 D9-6 Sec. 2D.45



D9-7 Sec. 2D.45 D9-8 Sec. 2D.45 D9-9 Sec. 2D.45 D9-10 Sec. 2D.45 D9-11 Sec. 2D.45 D9-11a Sec. 2D.45 D9-11b Sec. 2D.45



D9-12 Sec. 2D.45 D9-13 Sec. 2D.45 D9-13a Sec. 2D.45 D9-13b Sec. 2D.45 D9-13c Sec. 2D.45 D9-14 Sec. 2D.45

OMUTCD – Only English units are used with signs.

Guide Signs- Directional Series



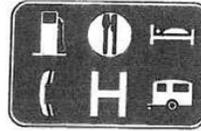
D9-15
Sec. 2E.51



D9-16
Sec. 2D.45



D9-17
Sec. 2D.45



D9-18
Sec. 2E.51



D9-18a
Sec. 2E.51



D9-18e
Sec. 2E.51



D10-1
Sec. 2D.46



D10-1a
Sec. 2D.46



D10-2
Sec. 2D.46



D10-2a
Sec. 2D.46



D10-3
Sec. 2D.46



D10-3a
Sec. 2D.46



D10-4
Sec. 2E.54



D10-5
Sec. 2E.54



D10-H5a
Sec. 2E.54



D11-1
Sec. 9B.17



D12-1
Sec. 2D.45



D12-2
Sec. 2D.45



D12-3
Sec. 2D.45



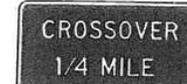
D12-4
Sec. 2D.45



D12-5
Sec. 2D.45



D13-1
Sec. 2D.51



D13-2
Sec. 2D.51

OMUTCD – Only English units are used with signs.

Guide Signs- Information Series



I-1
Sec. 2D.47



I-2
Sec. 2D.48



I-H2
Sec. 2D.48



I-H2a
Sec. 2D.48



I-H2b
Sec. 2D.48



I-H2c
Sec. 2D.48



I-H2d
Sec. 2D.48



I-H2e
Sec. 2D.48



I-H2f
Sec. 2D.48



I-H2g
Sec. 2D.48



I-3
Sec. 2D.48



I-5
Sec. 2D.48



I-6
Sec. 2D.48



I-7
Sec. 2D.48



I-8
Sec. 2D.48



I-11
Sec. 2D.48



I-12
Sec. 10C.20



I-13
Sec. 8B.12



I-13a
Sec. 8B.12

OMUTCD – Only English units are used with signs.

Guide Signs- Freeways, Expressways and Miscellaneous



E1-H1
Sec. 2E.30



E1-H1
Sec. 2E.30



E1-H1
Sec. 2E.30



E1-H1
Sec. 2E.30



E1-H3
Sec. 2E.33



E1-H5
Sec. 2E.28



E2-H1
Sec. 2E.31



E2-H1a
Sec. 2E.31



E2-2
Sec. 2E.51



E2-3
Sec. 2E.51



E3-H1
Sec. 2E.32



E3-H2
Sec. 2H.09



E4-H1
Sec. 2E.19



E5-H1
Sec. 2E.34



E5-H1a
Sec. 2E.34



E5-H1b
Sec. 2E.34



E5-H1c
Sec. 2E.34



E5-2
Sec 6F.28



E5-2a
Sec. 6F.28



E5-H2b
Sec. 6F.28



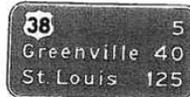
E5-3
Sec. 6F.28



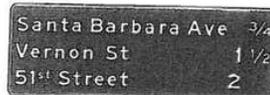
E6-H2
Sec. 2E.11



E6-H2
Sec. 2E.11



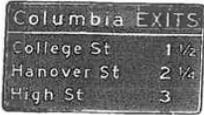
E7-H1
Sec. 2E.36



E7-H2
Sec. 2E.37

OMUTCD – Only English units are used on signs.

Guide Signs- Freeways, Expressways and Miscellaneous – continued



E7-H3
Sec. 2E.38



E7-H4
Sec. 2E.39



E8-H2
Sec. 2E.55



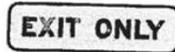
E8-H2a
Sec 2E.55



E8-H3
Sec. 2E.55



E11-1
Sec. 2E.20



E11-1a
Sec. 2E.20



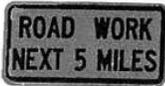
E11-1b
Sec. 2E.20



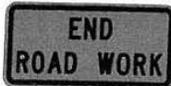
E11-1c
Sec. 2E.20



E13-1
Sec. 2E.34



G20-1
Sec. 6F.51



G20-2
Sec. 6F.52



G20-4
Sec. 6F.54

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Recreational and Cultural Interest Series



RG-010
Sec. 2H.04



RG-020
Sec. 2H.04



RG-030
Sec. 2H.04



RG-040
Sec. 2H.04



RG-050
Sec. 2H.04



RG-060
Sec. 2H.04

(This is just a representative few of the symbol signs in this series. The full series is shown in Figure 2H-5 and discussed in Section 2H.04.)

Emergency Management Series



EM-1
Sec. 21.03



EM-2
Sec. 21.04



EM-3
Sec. 21.05



EM-4
Sec. 21.06



EM-5
Sec. 21.07



EM-6a
Sec. 21.08



EM-6b
Sec. 21.08



EM-6c
Sec. 21.08



EM-6d
Sec. 21.08



EM-7a
Sec. 21.09



EM-7b
Sec. 21.09

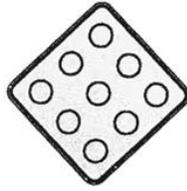


EM-7c
Sec. 21.09



EM-7d
Sec. 21.09

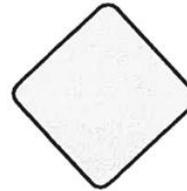
Object Markers and End of Roadway Markers



OM1-1
Sec. 3C.01



OM1-2
Sec. 3C.01



OM1-3
Sec. 3C.01



OM2-1V
Sec. 3C.01



OM2-1H
Sec. 3C.01



OM2-2V
Sec. 3C.01



OM2-2H
Sec. 3C.01



OM-3L
Sec. 3C.02



OM-3C
Sec. 3C.02



OM-3R
Sec. 3C.02



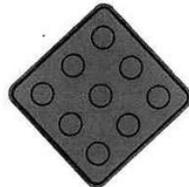
OM-H3L
Sec. 3C.02



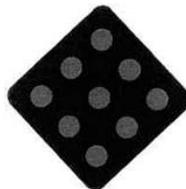
OM-H3C
Sec. 3C.02



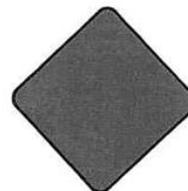
OM-H3R
Sec. 3C.02



OM4-1
Sec. 3C.04



OM4-2
Sec. 3C.04



OM4-3
Sec. 3C.04

OMUTCD – Only English units are used on signs.

School Area Signs



R16-H3
Sec. 7B.15



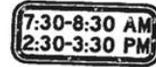
S1-1
Sec. 7B.08



S3-1
Sec. 7B.10



S3-H2
Sec. 7B.10



S4-1
Sec. 7B.11



S4-3
Sec. 7B.11



S4-5
Sec. 7B.12



S4-H5
Sec. 7B.11



S4-5a
Sec. 7B.12



S4-6
Sec. 7B.11



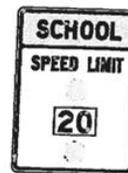
S5-2
Sec. 7B.13



S5-H3
Sec. 7B.11



S5-H4
Sec. 7B.11



S5-H5
Sec. 7B.11

item in any law appropriating money passed by the General Assembly, except as herein after provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

(1851, am. 1912, 1918, 1953)

INITIATIVE AND REFERENDUM TO AMEND CONSTITUTION.

§1a The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

(1912, am. 2008)

INITIATIVE AND REFERENDUM TO ENACT LAWS.

§1b When at any time, not less than ten days prior to the commencement of any session of the General Assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the General Assembly as soon as it convenes. If said proposed law shall be passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the General Assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the General Assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the General Assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary peti-

723.01 Legislative authority to have care, supervision, and control of public roads, grounds and bridges.

Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation. The liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by a failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code.

Effective Date: 04-09-2003

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2744.01 Political subdivision tort liability definitions.

As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)

(1) "Governmental function" means a function of a political subdivision that is specified in division (C) (2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

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- (g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;
- (h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;
- (i) The enforcement or nonperformance of any law;
- (j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;
- (k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.
- (l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;
- ~~(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;~~
- (n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;
- (o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;
- (p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;
- (q) Urban renewal projects and the elimination of slum conditions, including the performance of any activity that a county land reutilization corporation is authorized to perform under Chapter 1724. or 5722. of the Revised Code;
- (r) Flood control measures;
- (s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

- (t) The issuance of revenue obligations under section 140.06 of the Revised Code;
- (u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:
 - (i) A park, playground, or playfield;
 - (ii) An indoor recreational facility;
 - (iii) A zoo or zoological park;
 - (iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;
 - (v) A golf course;
 - (vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;
 - (vii) A rope course or climbing walls;
 - (viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.
- ~~(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;~~
- (w)
 - (i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;
 - (ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.
- (x) A function that the general assembly mandates a political subdivision to perform.
- (D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.
- (E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, county land reutilization corporation organized under Chapter 1724. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)

(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 04-09-2003; 04-27-2005; 10-12-2006

APPENDIX I

2744.02 Governmental functions and proprietary functions of political subdivisions.

(A)

(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) The defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, whether performed on behalf of that political subdivision or on behalf of another political subdivision.

(3) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(C) An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.

Effective Date: 04-09-2003; 2007 HB119 09-29-2007

APPENDIX J

2744.05 Damage limitations.

Notwithstanding any other provisions of the Revised Code or rules of a court to the contrary, in an action against a political subdivision to recover damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function:

(A) Punitive or exemplary damages shall not be awarded.

(B)

(1) If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to those benefits.

The amount of the benefits shall be deducted from an award against a political subdivision under division (B)(1) of this section regardless of whether the claimant may be under an obligation to pay back the benefits upon recovery, in whole or in part, for the claim. A claimant whose benefits have been deducted from an award under division (B)(1) of this section is not considered fully compensated and shall not be required to reimburse a subrogated claim for benefits deducted from an award pursuant to division (B)(1) of this section.

(2) Nothing in division (B)(1) of this section shall be construed to do either of the following:

(a) Limit the rights of a beneficiary under a life insurance policy or the rights of sureties under fidelity or surety bonds;

(b) Prohibit the department of medicaid from recovering from the political subdivision, pursuant to section 5160.37 of the Revised Code, the cost of medical assistance provided under a medical assistance program.

(C)

(1) There shall not be any limitation on compensatory damages that represent the actual loss of the person who is awarded the damages. However, except in wrongful death actions brought pursuant to Chapter 2125. of the Revised Code, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages shall not exceed two hundred fifty thousand dollars in favor of any one person. The limitation on damages that do not represent the actual loss of the person who is awarded the damages provided in this division does not apply to court costs that are awarded to a plaintiff, or to interest on a judgment rendered in favor of a plaintiff, in an action against a political subdivision.

(2) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(a) All wages, salaries, or other compensation lost by the person injured as a result of the injury, including wages, salaries, or other compensation lost as of the date of a judgment and future expected lost earnings of the person injured;

(b) All expenditures of the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury;

(c) All expenditures to be incurred in the future, as determined by the court, by the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(d) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property that was injured or destroyed;

(e) All expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed in relation to the actual preparation or presentation of the claim involved;

(f) Any other expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

"The actual loss of the person who is awarded the damages" does not include any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss, and does not include any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 10/1/2011.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 04-09-2003; 2008 HB562 09-22-2008

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APPENDIX K

4511.09 Manual for uniform system of traffic control devices.

The department of transportation shall adopt a manual for a uniform system of traffic control devices, including signs denoting names of streets and highways, for use upon any street, highway, bikeway, or private road open to public travel within this state. Such uniform system shall correlate with, and so far as possible conform to, the system approved by the federal highway administration.

Amended by 129th General Assembly File No. 70, HB 349, §1, eff. 4/20/2012.

Effective Date: 09-28-1973

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APPENDIX L

4511.11 Local conformity to manual for uniform system of traffic control devices.

(A) Local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the department of transportation manual for a uniform system of traffic control devices, adopted under section 4511.09 of the Revised Code, upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76 and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.

(B) The director of transportation may require to be removed any traffic control device that does not conform to the manual for a uniform system of traffic control devices on the extensions of the state highway system within municipal corporations.

(C) No village shall place or maintain any traffic control signal upon an extension of the state highway system within the village without first obtaining the permission of the director. The director may revoke the permission and may require to be removed any traffic control signal that has been erected without the director's permission on an extension of a state highway within a village, or that, if erected under a permit granted by the director, does not conform to the state manual , or that is not operated in accordance with the terms of the permit.

(D) All traffic control devices erected on any street, highway, alley, bikeway, or private road open to public travel shall conform to the state manual .

(E) No person, firm, or corporation shall sell or offer for sale to local authorities any traffic control device that does not conform to the state manual , except by permission of the director.

(F) No local authority shall purchase or manufacture any traffic control device that does not conform to the state manual , except by permission of the director.

(G) Whoever violates division (E) of this section is guilty of a misdemeanor of the third degree.

Amended by 129th General Assembly File No.70, HB 349, §1, eff. 4/20/2012.

Effective Date: 01-01-2004

APPENDIX M

4511.65 Designation of through highways.

(A) All state routes are hereby designated as through highways, provided that stop signs, yield signs, or traffic control signals shall be erected at all intersections with such through highways by the department of transportation as to highways under its jurisdiction and by local authorities as to highways under their jurisdiction, except as otherwise provided in this section. Where two or more state routes that are through highways intersect and no traffic control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the department, except as otherwise provided in this section.

Whenever the director of transportation determines on the basis of an engineering and traffic investigation that stop signs are necessary to stop traffic on a through highway for safe and efficient operation, nothing in this section shall be construed to prevent such installations. When circumstances warrant, the director also may omit stop signs on roadways intersecting through highways under his jurisdiction. Before the director either installs or removes a stop sign under this division, he shall give notice, in writing, of that proposed action to the affected local authority at least thirty days before installing or removing the stop sign.

(B) Other streets or highways, or portions thereof, are hereby designated through highways if they are within a municipal corporation, if they have a continuous length of more than one mile between the limits of said street or highway or portion thereof, and if they have "stop" or "yield" signs or traffic control signals at the entrances of the majority of intersecting streets or highways. For purposes of this section, the limits of said street or highway or portion thereof shall be a municipal corporation line, the physical terminus of the street or highway, or any point on said street or highway at which vehicular traffic thereon is required by regulatory signs to stop or yield to traffic on the intersecting street, provided that in residence districts a municipal corporation may by ordinance designate said street or highway, or portion thereof, not to be a through highway and thereafter the affected residence district shall be indicated by official traffic control devices. Where two or more through highways designated under this division intersect and no traffic control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the department or by local authorities having jurisdiction, except as otherwise provided in this section.

(C) The department or local authorities having jurisdiction need not erect stop signs at intersections they find to be so constructed as to permit traffic to safely enter a through highway without coming to a stop. Signs shall be erected at such intersections indicating that the operator of a vehicle shall yield the right-of-way to or merge with all traffic proceeding on the through highway.

(D) Local authorities with reference to highways under their jurisdiction may designate additional through highways and shall erect stop signs, yield signs, or traffic control signals at all streets and highways intersecting such through highways, or may designate any intersection as a stop or yield intersection and shall erect like signs at one or more entrances to such intersection.

Effective Date: 11-02-1989